

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

September 9, 2004

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 9, 2004, at 12:00 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Harold Warner Jr. Vice-Chair; Ronald Marnell, James Barfield (in @ 1:19); Darrell Downing; John W. McKay Jr. (in @ 1:09); Bill Johnson (in @ 1:02 out @ 4:00); Bud Hentzen; M.S. Mitchell (in @ 12:48); Denise Sherman; Gary K. Gibbs; and Frank Garofalo. Elizabeth Bishop; Morris K. Dunlap Chair; and Bob Hernandez were not present.

Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Associate Planner; Jamsheed Mehta, Transportation Supervisor; Scott Wadle, Associate Planner Advanced Plans Division; and Rose Simmering, Recording Secretary.

1. Visioneering --- MAPC Focus Group.

Visioneering MAPC Focus Group – Session taped but no minutes.

❖ PLANNING COMMISSION ITEMS

2. Election of Metropolitan Area Planning Commission Chair and Vice-Chair.

MOTION: To nominate Morris Dunlap MAPC Chair.

HENTZEN moved, **GAROFALO** seconded the motion, and it carried (9-0).

MOTION: To nominate Harold Warner MAPC Vice Chair.

MITCHELL moved, **HENTZEN** seconded the motion, and it carried (9-0).

3. Approval of MAPC August 19, 2004 meeting minutes.

No minutes approved.

❖ MPO AGENDA ITEMS

4. Amendment to the Transportation Improvement Program (TIP) 2004-2008.

JAMSHEED MEHTA (showing slides) Planning Staff is requesting an amendment to the 2004-2008 Transportation Improvement Program (TIP) to reflect changes to the Intelligent Transportation System (ITS) projects and funding sources.

In 2002, Wichita, Sedgwick County and KDOT signed a Memorandum of Understanding (MOU) to share \$6,250,000 on ITS projects. Attachment #1 shows these funds and the respective share of funds (Wichita and Sedgwick County at 20% each, and KDOT at 60%) in the current TIP.

The MAPD and the City of Wichita have secured additional funding through federal earmarks in the past three transportation appropriations bills. These additional \$5,750,000 in federal funds, plus the \$6,250,000 from the three-party MOU, provides nearly \$12,000,000 for ITS programming.

The MAPD coordinates an ITS Technical Committee and an ITS Policy Committee that identifies and recommends projects for funding from this pool of funds. Attachment #2 identifies specific ITS projects recommended for funding by these committees.

The MPO's Technical Advisory Committee (TAC) has reviewed these projects at the August 23, 2004 meeting, and also recommends MPO approval. Separately, the governing bodies of the City of Wichita and Sedgwick County, and the KDOT will approve a supplemental agreement on September 14 and 15, 2004, to share the additional federal funds on four ITS integration projects.

Recommendation: Amend the Transportation Improvement Program 2004-2008 by deleting projects shown on Attachment #1, adding projects as shown on Attachment #2, and authorizing the Chairman to sign on behalf of the MPO.

GAROFALO What is the total cost of these 6 projects?

MEHTA It will be a little less than \$12 million because we spent \$123,000 for a Phase I on an Automatic Vehicle Location Study over a year ago. Another reason why it's less than \$12 million is that when the federal government says here is your one million dollars, it actually means \$980,000. They skim a little off the top, and that explains the difference between the appropriations bill at Congress and what we actually get allocated or obligated.

MOTION: To amend the Transportation Improvement Program 2004-2008 by deleting projects shown on Attachment #1, adding projects as shown on Attachment #2, and authorizing the Chairman to sign on behalf of the MPO.

JOHNSON moved, **DOWNING** seconded the motion, and it carried (10-0).

❖ **SUBDIVISION ITEMS**

5. Consideration of Subdivision Committee recommendations from the meeting

5-1. SUB2004-93 - Final Plat – MESA VERDE ADDITION, located south of 37th Street North and on the east side of Meridian.

NOTE: This is an unplatted site located within the City.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **Minimum pads need to be platted for the lots adjoining the drainage right-of-way.**
- D. The Applicant shall guarantee the paving of the proposed streets. A petition shall also be provided for future half-street paving improvements to Meridian along with future storm sewer improvements.
- E. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements", a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- F. The applicant shall submit a covenant, which provides for four (4) off-street parking spaces per dwelling unit on each lot, which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- G. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- H. **GIS** needs to comment on the plat's street names. **The street names are approved.**
- I. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- J. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lots 5-13, Block A. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width.
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of

Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy requests additional easements.**
- T. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

GAROFALO moved, **MITCHELL** seconded the motion, and it carried (10-0).

5-2. SUB2004-32 – Revised One-Step Final Plat – BANUELOS ADDITION, located north of 29th Street North, west of Broadway.

NOTE: This is an unplatted site located within the City.

STAFF COMMENTS:

- A. City water is available to serve the site. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. **City Engineering** has requested a petition for the paving of Fairview and a No Protest Agreement for the future paving of 30th St. North.
- E. The reference in the plat's text to a contingent dedication should be deleted.
- F. The building setback should be located north-south along Fairview, labeled as a contingent building setback and be referenced in the plat's text.
- G. The building setback along 30th St. North needs to be labeled.
- H. **City Engineering** has requested an additional 10-ft easement along the west property line.
- I. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- J. The applicant is advised that in regard to the portion of the building within the building setback; that while such areas of the existing structure may be maintained, no enlargement of the building in such area will be allowed and if removed, all subsequent rebuilding shall observe building setbacks.
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)

- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

GAROFALO moved, **MITCHELL** seconded the motion, and it carried (10-0).

5-3. **SUB2004-101 – One-Step Final Plat – VIA CHRISTI-ST JOSEPH WEST ADDITION, located on the east side of Hillside, north of Harry.**

NOTE: This is an unplatted site located within the City.

STAFF COMMENTS:

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. **Traffic Engineering** needs to comment on the access controls. The plat proposes one opening along Hillside. **The access controls are approved.**
- E. **Traffic Engineering** has requested the dedication of 20-ft additional right-of-way along Hillside and a 10-ft contingent dedication to conform with the 60-ft half-street right-of-way required by the Access Management Regulations. The plat proposes a 20-ft contingent street dedication. **The Subdivision Committee approved a 20-ft contingent street dedication.**

Subsequent to the Subdivision Meeting, Traffic Engineering has approved the contingent right-of-way dedication as proposed.
- F. As a B-zoned lot abutting a non-arterial street, the Subdivision regulations require sidewalks along Zimmerly, Clifton and Grand Streets.
- G. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- H. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- I. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges

the signatures on this plat, to be printed beneath the notary's signature.

- J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- K. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- L. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- O. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- P. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

NEIL STRAHL Planning staff. This was approved by the Subdivision Committee two weeks ago; the one item of note is item E, in the staff report regarding right-of-way. The plat currently has 30-ft of existing half-street right-of-way along Hillside and the Access Management Regulations require 60-ft so it is 30-ft shy. Traffic Engineering had requested 20-ft additional right-of-way with a 10-ft contingent street dedication. The plat proposed a 20-ft contingent street dedication and the Subdivision Committee did approve the 20-ft contingent dedication as proposed on the plat. Subsequent to the Subdivision meeting, and upon further review Traffic Engineering has approved the contingent 20-ft street dedication as proposed.

GAROFALO There was a negative vote on this at Subdivision.

JOHNSON I think Commissioner Bishop voted negative because we had changed the recommendation from Traffic. But I think at the time the way the motion was made was that traffic was going to check in to see whether they could live with the motion we made and report today, which they have done.

MITCHELL I asked for this item to be pulled and reviewed today. I want to make a case that the 20-ft whether it was contingent or outright is an imposition on the property owners on both sides of Hillside. The building that is on the Parcel that is not part of this Plat but immediately adjacent to it which would be subject to the same kind of a imposition if it were brought in for any formal action by this Committee, would take within 10-ft of the building and approximately 10-ft above the street so I think it is an impractical application of additional right-of-way for that Parcel.

That is also true for the piece of property south of Grand Avenue, which is immediately south of that. I am going to pass these pictures around so that you can look at the effect that 20-ft taking would have on both the Via Christi side and then if it was applied uniformly to any application on the west side of Hillside. That 20-ft line is within 2-3 feet of the house that is south of Grand Avenue right across the street from this Parcel. It is also up against the east line of the house on the north side of that street. So to take 20-ft on each side of Hillside within this area between Lincoln and Harry I think is impractical at least for the portion that is within this platted area. I am going to recommend that item E not be required.

WARNER Is Traffic Engineering here today?

STRAHL Traffic Engineering is not here today.

MITCHELL What I am saying take it off of the east side on any application that comes, if there is any application in any fairness it ought to be taken off the same amount on the west side if we are going to be strict about having 60-ft half-street right-of-way on every Section line street and I think that is impractical. One other point - a contingency, and I checked with Neil to be sure, means that the City will not take the possession or use of that property until the City decides when to do it. I don't know that the applicant should be put in a position where a loss of parking or a loss of the use of their property is left up to the City in areas that are already developed.

BARFIELD Could we set this item aside until Traffic Engineering can come up and talk to us?

WARNER Subdivision Committee heard this and made the recommendation for the contingent rather than the dedication and at that point and time the applicant agreed to that.

PHIL MEYER BAUGHMAN COMPANY I don't want this deferred. We are on a time line to start the building. I don't mind deferring until Traffic Engineering can make it up here today.

STRAHL Jim Armour will be available later this afternoon.

JIM ARMOUR, ACTING CITY ENGINEERING There are some questions about the 20-foot contingent right-of-way dedication on the west side of this proposed replat.

MITCHELL My complaint is that if 20 feet were taken off the entire tract outlined in brown there is a Parcel at the south end where the edge of that 20-foot additional right-of-way would be about 10 feet from the edge of the building and about 10-foot difference in elevation between the street and the building. The property south of that is even higher. So taking 20-feet off of those two Parcels I believe would render them unusable or render the City's use of that full 20-feet impractical. If the same amount were taken off of the west side of Hillside as has been the past recommendation to get the full right-of-way that is in the current Subdivision Regulations from either side, that line is within two feet of one of the buildings that is one Grand Avenue and the other is right up against the east side. So taking the full right-of-way through this corridor on Hillside I don't think is practical and I don't think it should be required.

JIM ARMOUR I think staff had met with the applicant on this issue. On the west side of Hillside from Harry to a full 1/2 mile north is a 40-foot right-of-way. On the north of this plat on the east side is a full 40-foot right-of-way, the current right-of-way on the west side of this is 30. Staff had asked and we had hoped to maybe get a 10-foot right-of-way and 10-foot contingent and the applicant was opposed to that. But the applicant did not oppose a 20-foot contingent right-of-way dedication. Therefore staff is recommending that we get a 20-foot contingent right-of-way dedication along this piece of property, which gives us a future for 50. I might point out if they can remember John Stevens from 20 years ago; there was a lot of debate about widening Hillside and there were issues about getting right-of-way at that time and the City finally did get enough right-of-way to build it. Contingent dedication still allows the property owner use of the property, it is still on the tax rolls, and then at such time that we ever need it then we would take what would be absolutely necessary and it is even possible to deed to the rest of it back or release the remainder of the contingent dedication.

Often times what I have found here recently in road widening projects is that if we don't have the right-of-way, acquiring it takes almost 2 years. We have 4-5 projects now that are being delayed for 2 years due to right-of-way acquisition. So staff recommends in this case that this is consistent with our past policy and practice and we think it is reasonable.

MITCHELL If you had that 20 feet that you could exercise full rights over today, how would you make use of it to improve Hillside between Lincoln and Harry?

ARMOUR If it was widened to five lanes then we would typically widen on both sides an equal amount. Often times when the grades do get steep then we do need additional right-of-way to taper back or make some sort of grade adjustment. Now for lots that are difficult or in close proximity our right-of-way acquisition people tell us sometimes it requires a full take.

MITCHELL Of the entire property?

ARMOUR Correct. Which very well may happen in that case.

MITCHELL But it wouldn't if you took a contingent dedication.

ARMOUR The building that you've referenced is not within the platted area. That would be a separate issue to be dealt with at the time of widening.

MITCHELL You would also take a like amount off the west side?

ARMOUR Since there is a full 40-feet of right-of-way on the west side today and that is a residential area we would probably not go in and condemn or buy 1/2 mile of additional 10-foot of right-of-way.

MITCHELL But if I came in for a zoning change on one of those residential lots, what would you do then?

ARMOUR I think we get to that question on the last item here today.

MITCHELL You don't want to answer that question?

ARMOUR Not at this time.

MARNELL The delay that takes two years to acquire the right-of-way, is that going through due process with the property owner?

ARMOUR Correct.

MARNELL Are you indicating that we should shorten the due process somehow?

ARMOUR I am not trying to restrict property owners having due process. I am saying where we have right-of-way we are able to proceed with projects and I think in a pretty timely fashion. Where we have the need to acquire right-of-way we almost need to build in two additional years in the design and construction of the project due to that fact. To answer your question part of that process involves if we have federal funds adding to that time.

GAROFALO You are saying that you now have 40-feet from Harry on the north except for that block?

ARMOUR On the west side of the roadway, the current right-of-way is 40 feet on the west side at least 1/2 mile I just checked the quarter section maps. It is probably the whole mile and from this point north on the east side we also have 40 feet so a total of 80 foot of right-of-way.

GAROFALO What do you have there?

ARMOUR We have 30 feet.

MCKAY 40-feet on the west and 30 on the east.

GAROFALO Then why do want 20 on the east?

ARMOUR The current standards for Subdivisions are that we would take a 60-foot total right-of-way along arterial roadways. We made an exception here to go to 50, which was the old standard up until a year, or two ago.

GAROFALO But you don't have that on the west.

ARMOUR No we don't but if we need it to make a grade adjustment on this east side then we would have it. Which Mr. Mitchell indicated that we may have a 10-foot difference in elevation at least when you get south here to Grand.

GAROFALO If you have 40 on all the rest of it then why not just take 10 on this side?

ARMOUR We don't always know exactly what you will need until you get into a design of a project and that is the benefit of doing a contingent dedication and then at that time you can scale back but it is a lot harder to go the other way.

JOHNSON Basically what he just stated the policy now is 120 foot right-of-way and the old standard was 100 foot so it came down to needing 20 additional feet. What traffic wanted was a dedication of 10 foot with a contingent dedication of another 10 foot, which would get 50 foot of right-of-way. The applicant didn't want that because they had a tenant in a building that the parking lot would extend into this dedication 10 feet. So from the Subdivision standpoint what we wanted to do was to do a contingent dedication so it didn't mess up a lease on the building. The City had the right to get either 10 or 20 foot at a later date and the applicant agreed to that, and traffic didn't know if they could. They needed to do some research and that is how we voted on it and that is why there was one vote against it because they wanted the full 10 foot dedication. They came back today and agreed with what the applicant wanted.

MOTION: Approve a 20-foot contingent dedication.

BARFIELD moved, **GAROFALO** seconded the motion, and it carried (8-3). **MARNELL, MITCHELL, MCKAY, opposed.**

SUBSTITUTE MOTION: get a 10-foot street dedication on the subject property and no contingent dedication.

MCKAY moved, **MITCHELL** seconded the motion, and it failed (3-8). **MARNELL, MITCHELL, MCKAY in favor**

JOHNSON The reason the applicant didn't want to do that particular reason was they were going to have to get a permit to use City property to leave their parking lot in effect the way it is working now.

❖ **PUBLIC HEARING — VACATION ITEMS**

6-1. VAC2004-32- Request to Vacate a Portion of a Platted Alley.

<u>APPLICANTS/OWNERS:</u>	Terri's Take Out c/o Terri Doss Howard & Joyce Siemiller JoAnn V Hudson
<u>LEGAL DESCRIPTION:</u>	That portion of a platted alley ROW, abutting the east side of Lot 51 and the west side of Lot 49, all in the Martinson's 4 th Addition, as recorded with Wichita, Sedgwick County, Kansas
<u>LOCATION:</u>	Generally west of Seneca Avenue, between Martinson Avenue and Exposition Avenue, on the south side of Douglas Avenue.
<u>REASON FOR REQUEST:</u>	Convert alley into private drive for abutting fast food restaurant
<u>CURRENT ZONING:</u>	Site is public right-of-way (ROW). Property east of the site is zoned "LI" Limited Industrial and "LC" Limited Commercial. Property north, across Douglas Avenue, and west of the site is zoned "LC". Property south of the site is zoned SF-5" Single-family Residential and "LC".

The applicants are requesting consideration to vacate the north, 15-foot wide (x) 125-foot long portion of a north-south platted alley that abuts the east side of Lot 51 and the west side of Lot 49, all in the Martinson's 4th Addition. Terri's Take Out (Terri's), which abuts the alley's west side, has paved the alley (without permits or inspections) with concrete and is using it as a drive-through lane for its pick up window. The City of Wichita Public Works cited the illegal use of the alley in an April 16, 2004 letter to Terri's, and also noted that the business' trash dumpster blocked the south end of the alley, thus stopping through traffic from the south. The letter gave several directions to remedy the illegal use, including vacating this portion of the alley.

This north portion of the platted alley intersects a platted west-east alley, which connects Martinson and Exposition Avenues. The platted north-south alley continues south to Texas Avenue past this intersection. Vacating the described portion of alley would not dead end it, as access to public ROW would continue to be through the platted west-east alley that connects Martinson and Exposition Avenues. There is sewer in the south portion of the alley. The Martinson's 4th Addition was recorded with the Register of Deeds in March 1886.

The sewer line in the alley was installed in 1908; the area served by this sewer line was the eighth area in the City to receive sewer service. Since 1996 there have been nine work orders received by City Water and Sewer to clear stoppage, knife and clean and remove roots from this line. The most recent work order in March 2004 was to clear a stoppage. The service life of this sewer line is past and Water and Sewer is planning to replace the line in the immediate future. There will be disruption to the drive through service during the replacement of the existing sewer line.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted alley ROW, as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time July 15, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portions of the platted alley ROW and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted alley ROW, described in the petition should be approved with conditions:
- (1) Retain the vacated alley as a sewer easement.
 - (2) Dedicate by separate instrument an additional of 5-foot of easement to bring the easement up to the current 20-foot utility easement standards where the sewer line is located.
 - (3) Provide a survey to verify the location of Terri's building and the other structures on the east side in relation to the current alley/easement and the subsequent wider easement created by the vacation. Provide a contingent dedication of easement by separate instrument if needed where structures would be encroaching into the 20-foot easement created by the vacation of the alley ROW, or into the current alley ROW.
 - (4) The City will not be held liable to disruption to the drive through service to Terri's Take Out during the replacement of the existing sewer line.
 - (5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - (6) All improvements shall be according to City Standards.
 - (7) All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void.
 - (8) Dedicate by separate instrument joint access.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Retain the vacated alley as a sewer easement.
- (2) Dedicate by separate instrument an additional of 5-foot of easement to bring the easement up to the current 20-foot utility easement standards where the sewer line is located.
- (3) Provide a survey to verify the location of Terri's building and the other structures on the east side in relation to the current alley/easement and the subsequent wider easement created by the vacation.
- (4) Provide a contingent dedication of easement by separate instrument if needed where structures would be encroaching into the 20-foot easement created by the vacation of the alley ROW, or into the current alley ROW.
- (5) The City will not be held liable to disruption to the drive through service to Terri's Take Out during the replacement of the existing sewer line.
- (6) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

- (7) All improvements shall be according to City Standards. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void.
- (8) Dedicate by separate instrument joint access.

MOTION: Deferral for 2 weeks.

MARNELL moved, **MITCHELL** seconded the motion, and it carried (11-0).

6-2. VAC2004-34- Request to vacate a portion of a Utility Easement.

OWNER/APPLICANT: Brentwood Development, Inc.

AGENT: Ruggles and Bohm PA c/o Tom Ruggles

LEGAL DESCRIPTION: The west 10-feet of the east 30-feet, except the south 10-feet thereof, of Lot 23, Block 1, The Clear Creek Addition, as recorded Wichita, Sedgwick County, Kansas.

LOCATION: Generally located between US-54 and Lincoln Street and west of 143rd Street East, more specifically on the southwest corner of Laguna and 143rd Street East.

REASON FOR REQUEST: Allow larger house to go onto lot

CURRENT ZONING: Subject property and the northern, western and southern abutting properties are zoned "SF-5" Single-Family Residential. Property east of the subject property and across 143rd Street East is zoned "SF-20" Single-family Residential.

The applicant is requesting consideration for the vacation of the west 10-feet of the east 30-feet of Lot 23, Block 1, the Clear Creek Addition. Within the east 30-feet of Lot 23, west to east, there is a platted 20-foot drainage and utility easement, a platted 5-foot wall easement and a platted 5-foot utility easement. The applicant proposes vacation of the west 10-feet of the 20-foot drainage/utility easement to allow a larger house on the lot. There appears to be a portion of sewer and a manhole in the southern portion of the multiple platted easements. There is no water in the platted easements. There is no mention of the 5-foot wall easement in the plat's text and its placement between and abutting the 20-foot utility/drainage easement and the 5-foot utility easement could be problematic, in regards to its proximity to utilities. The Clear Creek Addition was recorded with the Register of Deeds May 29, 2003.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted drainage - utility easement as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 - 1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 19, 2004, which was at least 20 days prior to this public hearing.
 - 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted drainage – utility easement and the public will suffer no loss or inconvenience thereby.
 - 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted drainage/utility easement described in the petition should be approved with conditions:
 - 1. Retain that portion of the easement around the existing sewer line and the manhole where the sewer line ends on Lot 23, Block 1, the Clear Creek Addition, as recommended by City Public Works, Water & Sewer, Strom Water and the franchised utilities.
 - 2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - 3. Provide a hold harmless agreement releasing the City of liability in regards to damage or replacement of any wall in the platted 5-foot wall easement, when maintenance, repair or replacement of the sewer line is required, where sewer passes through the platted 5-foot wall easement.
 - 4. All improvements shall be according to City Standards.
 - 5. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Retain that portion of the easement around the existing sewer line and the manhole where the sewer line ends on Lot 23, Block 1, the Clear Creek Addition, as recommended by City Public Works, Water & Sewer, Strom Water and the franchised utilities.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (3) Provide a hold harmless agreement releasing the City of liability in regards to damage or replacement of any wall in the platted 5-foot wall easement, when maintenance, repair or replacement of the sewer line is required, where sewer passes through the platted 5-foot wall easement.
- (4) All improvements shall be according to City Standards.
- (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **GAROFALO** seconded the motion, and it carried (11-0).

6-3. VAC2004-35 – Request to Vacate Multiple Utility Easements.

OWNER/APPLICANT: Wichita Inn Suites Inc., c/o Doug Maryott

AGENT: Baughman Company, PA c/o Terry Smythe

LEGAL DESCRIPTION:

7-feet of the platted 14-foot utility easement located and running parallel to the south side of Lot 1, Cain and Smith's Replat of a part of Block 3, the Beverly Manor Addition, Wichita, Sedgwick County, Kansas.

7-feet of the platted 14-foot utility easement located and running parallel to the north side of Lot 2, Cain and Smith's Replat of a part of Block 3, the Beverly Manor Addition, Wichita, Sedgwick County, Kansas.

The west 2.47-feet of the south 65-feet of the north 137.5-feet of Lot 8, Cain and Smith's Replat of a part of Block 3, the Beverly Manor Addition, Wichita, Sedgwick County, Kansas.

The north 5-feet of the west 140-feet of Lot 2, New Western Addition, Wichita, Sedgwick County, Kansas.

The west 5-feet of the north 127.5-feet of Lot 2, New Western Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located midway between Oliver Avenue and Edgemoor Drive on the southeast corner of Kellogg Drive and Pinecrest Avenue.

REASON FOR REQUEST: Redevelopment of site.

CURRENT ZONING: Subject property and eastern, western and southern abutting properties are zoned "LC" Limited Commercial. Properties north of site, across Kellogg Avenue are zoned "GO" General Office

The applicant proposes vacation of multiple platted easements (see legal) located on Lots 1, 2 & 8, Cain and Smith's Replat of a part of Block 3, the Beverly Manor Addition and Lot 2, New Western Addition. There is an existing encroachment (building) on the 14-foot easement located on Lots 1 & 2, Cain and Smith's Replat of a part of Block 3, the Beverly Manor Addition. There are no water or sewer in this easement or the other easements. The Cain and Smith's Replat of a part of Block 3, the Beverly Manor Addition was recorded July 1, 1992. The New Western Addition was recorded March 28, 1985.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works and other utility representatives, Planning Staff recommends approval to vacate the platted easements as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 19, 2004 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described platted easements and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the platted easements described in the petition should be approved with conditions;

- (1) Provide Staff with a copy of any additional easements dedicated by separate instrument, as needed by Public Works, Water & Sewer, Storm Water and franchised utilities.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (3) Dedicate 10-feet of contingent ROW.
- (4) Provide guarantee or petition for extension of sewer service.
- (5) All improvements shall be according to City Standards.
- (6) All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide Staff with a copy of any additional easements dedicated by separate instrument, as needed by Public Works, Water & Sewer, Storm Water and franchised utilities.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
3. Dedicate 10-feet of contingent ROW.
4. Provide guarantee or petition for extension of sewer service.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

JIM ARMOUR The property in question submitted a petition to vacate certain easements that were across their property and in exchange the staff has recommended that they dedicate right-of-way along the frontage road that is consistent with the existing right-of-way on either side of their site. The Staff has asked for approximately 10-feet. Staff is agreeable to vacating these easements and we have asked the applicant to try and find where the sewers are, for additional easements if necessary. Again the question here is to align the subject property right-of-way with existing right-of-way on either side of it, in case of any future improvements. This recognizes that the Kellogg frontage road is already built, but anticipates any future need for any utilities. This issue is one that I would like to bring to your attention to. The fact is, a lot of utility companies sometimes will use the right-of-way, but if do not they will get a private utility easement by separate instrument. The result is, if the City ever does widen the ROW it triggers the need to relocate utilities in these private easements and the City has to pay the cost to relocate the utilities. I think it is safe to say that this past year alone we have probably spent a quarter of a million dollars paying utility companies to relocate where they were in private easements. This would eliminate that possibility. This stretch of Kellogg was already constructed prior to a lot of the fiber-optic lines or internet lines being installed. East of here, duck banks are being installed to accommodate future expansion of utilities. Here is a case where that future need might arise. This is consistent with our past practice for asking for that right-of-way dedication.

MITCHELL You have not asked for a utility easement you have asked for a full street dedication.

ARMOUR Yes, a contingent dedication, once again, contingent if in case we needed it.

MITCHELL Based on your decision on when it would be used.

ARMOUR Correct.

MITCHELL All the improvements that can be foreseen right now are at in place. You didn't at the time these improvements were constructed find it necessary to acquire this 10-feet.

ARMOUR I think that was the existing right-of-way along this stretch at that time.

MITCHELL What uses would be made of that 10-foot street right-of-way for street purposes?

ARMOUR I can't answer specifically what those uses would be at this time, but typically they'd be used during a street widening project and/or water line extension or improvements.

MITCHELL Where is the curb in reference to the current right-of-way lines?

ARMOUR My guess is that it is probably in this location. If that were about a 5-foot sidewalk I would say the curb is about 10-feet away.

MITCHELL So, is there is room for utilities between the curb and the property line?

ARMOUR Correct, at this point.

MARNELL Would a 10-foot utility easement solves the problem that you were describing, as well as a contingent ROW dedication?

ARMOUR It would solve the problem if utilities wanted to be in there. We wouldn't be able to construct a sidewalk in that area over a utility easement.

MITCHELL You didn't mention sidewalks before. I drove the length of the Kellogg improvement and the only place between Edgemoor and Rock Road where there are currently sidewalks, is under the present service road that is built in that area is at every driveway. There are no sidewalks between driveways so it is obviously is not the City's practice to build sidewalks along Kellogg frontage Road.

ARMOUR This photo would indicate there is existing sidewalk.

MITCHELL Why would you need to build another one?

ARMOUR If there was a widening of Kellogg you would have to move the sidewalk back in this case.

MOTION: To approve the vacation application leaving out the requirements for the 10-foot contingent right-of-way.

MITCHELL moved, **MARNELL** seconded the motion, and it carried (10-1) **JOHNSON** opposed.

6-4. VAC2004-36 – Request to Vacate a Platted Easement.

OWNER/APPLICANT: Wal-Mart Stores Inc. West Bay Properties c/o Tim Tucker

AGENT: KE Miller Engineering, PA c/o Kirk Miller

LEGAL DESCRIPTION: The platted 10-foot waterline easement on Lot 6, Block A, Replat of Part of the Kinkaid Park Addition, Wichita, Sedgwick County, Kansas. (see attached legal)

LOCATION: Generally located midway between Pawnee Avenue and the Arkansas River on the east side of Broadway Avenue.

REASON FOR REQUEST: Redevelopment of site & relocation of waterline.

CURRENT ZONING: Subject property and abutting and adjacent properties are zoned "GC" General Commercial.

The applicant proposes vacation of the platted 10-foot water easement (see legal) located on Lot 6, Block A, a Replat of Part of the Kinkaid Park Addition. There is an existing waterline in the platted 10-foot waterline easement. The applicant proposes to move the existing water for redevelopment of the site. The site is part of CUP DP-43. The Replat of Part of the Kinkaid Park Addition was recorded December 24, 2003.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted easement as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 19, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described platted easements and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the platted easement described in the petition should be approved with conditions;

- (7) Provide Staff with a copy of any additional easements dedicated by separate instrument, as needed and approved by Public Works, Water & Sewer, Storm Water and franchised utilities.
- (8) Any relocation or reconstruction of public utilities, including water, made necessary by this vacation shall be the responsibility of the applicant and must be reviewed and approved as needed by Public Works prior to relocation or reconstruction and shall be the responsibility of the applicant.
- (9) Provide a guarantee, if needed, for the relocation of the existing waterline.
- (10) All improvements shall be according to City Standards.
- (11) All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide Staff with a copy of any additional easements dedicated by separate instrument, as needed and approved by Public Works, Water & Sewer, Storm Water and franchised utilities.
2. Any relocation or reconstruction of public utilities, including water, made necessary by this vacation shall be the responsibility of the applicant and must be reviewed and approved as needed by Public Works prior to relocation or reconstruction and shall be the responsibility of the applicant.
3. Provide a guarantee, if needed, for the relocation of the existing waterline.
4. All improvements shall be according to City Standards.
5. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **GAROFALO** seconded the motion, and it carried (11-0).

6-5. VAC2004-38 – Amend Platter's Text to allow additional uses onto Reserve D.

OWNER/APPLICANT: Via Christi Property Services, Inc., c/o R Allan Allford

AGENT: Baughman Company, PA, c/o Russ Ewy

LEGAL DESCRIPTION: Vacate the platter's text in regards to uses allowed in Reserve D, Kansas Surgery and Recovery Center Addition.

LOCATION: Generally located southwest of the Webb Road and K-96, on the north side of 29th Street North

REASON FOR REQUEST: To allow for medical services, offices, bike path and parking.

CURRENT ZONING: Subject property and property south of the subject site are zoned "SF-5" Single-family Residential. and properties north and west of subject property are zoned "GO" General Office and "B" Multi-family Residential. Property east of the site is K-96 right-of-way and is not zoned.

The applicant is requesting consideration for the vacation of the uses of the 9.8-acre platted Reserve D, Kansas Surgery and Recovery Center Addition. The uses that Reserve D has been set aside for include irrigation, drainage, landscaping, pedestrian improvements and utilities confined to easements. The applicant requests the vacation to allow the additional uses of medical services, bike path, office and parking, while retaining the existing allowed uses in the Reserve. The site is in CUP DP-192 and the applicant has applied for an adjustment/amendment to reflect the vacation request. The Kansas Surgery and Recovery Center Addition was recorded with the Register of Deeds May 25, 1994.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives, and other interested parties, Planning Staff recommends approval to vacate the uses of that portion of Reserve D as described in the legal description to allow additional uses with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 19, 2004 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described uses of the portion of the platted reserve and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the uses of the portion of the platted reserve described in the petition should be approved subject to the following conditions:
- (1) Vacate the use restrictions as listed in Reserve D to allow the additional uses of medical services, bike path, office and parking. Retain the original uses allowed in Reserve D of irrigation, drainage, landscaping, pedestrian improvements and utilities confined to easements.
 - (2) Drainage and site plans must be provided to the Public Works Engineer for review and approval prior to the issuance of building permits.
 - (3) An amendment to CUP DP-192 and a zone change to allow the proposed uses of the vacation request must be completed prior to the vacation case going to WCC.
 - (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 - (5) All improvements shall be according to City Standards.
 - (6) All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the use restrictions as listed in Reserve D to allow the additional uses of medical services, bike path, office and parking. Retain the original uses allowed in Reserve D of irrigation, drainage, landscaping, pedestrian improvements and utilities confined to easements.
- (2) Drainage and site plans must be provided to the Public Works Engineer for review and approval prior to the issuance of building permits.
- (3) An amendment to CUP DP-192 and a zone change to allow the proposed uses of the vacation request must be completed prior to the vacation case going to WCC.
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (5) All improvements shall be according to City Standards.
- (6) All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void.

BILL LONGNECKER At this time a protest is being circulated, this protest is from an abutting property owner to the south. The protest is in regards to the use restrictions that are going to be lessened to allow certain activities on this property, including parking and office and medical services. The protest is primarily concerned with drainage that would occur if this open space were to be developed with parking and office buildings, which could increase the amount of run-off onto his properties to the south here.

The Subdivision Committee did approve this request with the list of conditions on your report, which includes drainage and site plans to be reviewed by Public Works. We have noted that there is an amendment to the C.U.P. and a zone change that reflect the proposed uses of the vacation request, which the applicant has submitted.

RUSS EWY, BAUGHMAN COMPANY This is the first we have heard of any protest on this vacation request and the subsequent CUP and zoning change request. Quite simply Reserve D was always held to provide the Kansas Surgery and Recovery Centers storm water drainage as well as some site amenities. When this was originally developed and proposed some 10 years ago, one of the major intents was to have an assistant living complex developed. So Reserve D has allowances for pedestrian improvements, bike paths, open space and drainage. I am not sure but as part of the Zoning and CUP Amendment there is a series of e-mails that came about today and yesterday on the back of my e-mail there is a conceptual site plan of how the site is going to develop which may be of use to explain exactly what is going on here.

I would point out first that the amount of development that is proposed to occur within Reserve D is quite insignificant and the majority of the property will still be available for detention. Currently there is dry detention serving the site today, portions of Tallgrass East do drain into this Kansas Surgery and Recovery Center property. All of the drainage concerns will be addressed in a Drainage Plan and we are proposing to do a wet pond as part of the site development. I believe that the concerns of this protestor will be addressed.

ROBERT H ANDRIOT, 10306 E WINDMERE, WICHITA KS 67236 My lot is the second one from the end. My main concern is the area in the tip. Right now I can get access to that bike trail back there and that is a big plus for me. Also I have 6 real mature pine

trees that were planted out there when we moved in and those are for noise abatement and for the obstruction so you don't have to look at the freeway back there. If they do make these improvements is there going to be any allowance for some type of a uniform fence to run back along that common area there to separate the residential area from the parking area? If they do put a fence in I would like to have a gate where I can get to that bike path.

RUSS EWY The CUP does require access to the bike path. Reserve D is identified as Parcel 3 in the CUP. All the southern Parcels require, at the time of site development, that the standard 6-8 foot masonry wall be installed. Currently there is a masonry wall that serves probably 1/2 or maybe 2/3 of the south line going west to east. The CUP, zone change and the vacation cases will go a long way in completing that wall on the south property line. It is not our intention to cut off anybody's access to the bike path. We will be more than happy to arranging access to the bike path with breaks in the wall, if that is what it is going to be required. As he mentioned there are homeowners that have supplemental plantings back behind their property and there are some native cottonwoods that have come up in that southeastern tip. We are more than agreeable to working with the HOA to save the mature trees and not make to many disruptions.

GAROFALO Is Reserve D a retention pond?

EWY There is no pond currently. The intended purpose of the Reserve is for detention in addition to some other uses, bike paths, pedestrian improvements and open space. The reserve is about 10-acres, but not all of that 10-acres is needed to detain the storm flow that is coming through the property. We feel that there is some useable space to Reserve D that we can reclaim and put into development, while at the same time insuring that storm water detention capabilities are intact. There is a requirement in the vacation that the City approve a drainage plan and that will ensure that the drainage is addressed.

MOTION: To approve, subject to staff comments and citing the findings in their report.

JOHNSON moved, **GIBBS** seconded the motion, and it carried (11-0).

❖ **PUBLIC HEARING — ZONING ITEMS**

7. **Case No.: CON2004-18** – Family Centered Services, Inc., c/o Douglas L. Watson (owner/applicant) Request Sedgwick County Conditional Use for a cemetery on property zoned "SF-20" Single-family Residential on property described as;

The West 61.55 feet of Webb-31 Addition, Sedgwick County, Kansas TOGETHER WITH the South 145.08 feet of Webb-31 Addition, Sedgwick County, Kansas. Generally located at the southwest corner of 31st Street South and Webb Road.

**JUNE 10, 2004 MAPC APPROVED
AUGUST 4, 2004 COUNTY COMMISSION RETURNED TO MAPC**

BACKGROUND: The applicant proposes to develop a cemetery at the southwest corner of 31st Street South and Webb Road (see attached site plan). The applicant owns a total 9.24 acres, of which 6.56 acres are zoned "LC" Limited Commercial and 2.78 acres are zoned "SF-20" Single Family Residential. A portion the applicant's property that is zoned "LC" is developed with a funeral home. The remainder of the applicant's property that is zoned "LC" is proposed to be used as a cemetery, a use that is permitted by right in the "LC" district. Cemeteries may be permitted with a Conditional Use in the "SF-20" district; therefore, the applicant has requested a Conditional Use for a cemetery on the portion of the applicant's property that is zoned "SF-20".

The surrounding properties are primarily developed with suburban residential and agricultural uses. Much of the surrounding property is zoned "SF-20" Single Family Residential. All corners of the 31st Street South and Webb Road intersection are zoned "LC" Limited Commercial, as is typical for arterial intersections in the community, and are undeveloped except for the applicant's funeral home.

CASE HISTORY: The applicant's property is platted as the Webb-31 Addition, which was recorded on July 15, 1999. In 2000, the applicant submitted a Conditional Use request (CON2000-00008) for a cemetery. The Conditional Use was approved by the MAPC but was appealed to the County Commission due to protest petitions representing 43% of the land area within the notification area. The applicant withdrew the request prior to the County Commission making a final decision on the request.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20" & "LC" Agriculture
SOUTH: "SF-20" Agriculture, Single Family
EAST: "SF-20" & "LC" Agriculture, Single Family
WEST: "SF-20" Agriculture, Church

PUBLIC SERVICES: The site has frontage to 31st Street South and Webb Road, both two-lane paved arterial streets. 31st Street South has traffic volumes of approximately 2,000 vehicles per day. The 2030 Transportation Plan estimates the volume for 31st Street South will increase to approximately 5,400 vehicles per day and recommends that 31st Street South remain a two lane arterial. Webb Road has traffic volumes of approximately 3,900 vehicles per day. The 2030 Transportation Plan estimates the volume for Webb Road will increase to approximately 5,300 vehicles per day and recommends that Webb Road be widened to a four-lane arterial. Municipal water and sewer services are not required for the proposed cemetery.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan indicates that the subject property is appropriate for "Commercial" development. The proposed cemetery is consistent with the "Commercial" designation.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan.
2. Development and use of the subject property shall be in accordance with all applicable federal, state, and local rules and regulations, including building and construction codes, health codes, and operational standards.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding properties are primarily developed with suburban residential and agricultural uses. Much of the surrounding property is zoned "SF-20" Single Family Residential. All corners of the 31st Street South and Webb Road intersection are zoned "LC" Limited Commercial, as is typical for arterial intersections in the community, and are undeveloped except for the applicant's funeral home. The proposed cemetery is consistent with the zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "SF-20" Single Family Residential. With a Conditional Use, a cemetery is permitted in the "SF-20" district. The "L-shaped" configuration of the portion of the applicant's property that is zoned "SF-20" is such that the most suitable development of this portion of the property is in conjunction with the remainder of the applicant's "LC"-zoned property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The development standards of the Unified Zoning Code should limit any detrimental affects of the proposed cemetery on nearby property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan indicates that the subject property is appropriate for "Commercial" development. The proposed cemetery is consistent with the "Commercial" designation.
5. Impact of the proposed development on community facilities: The proposed cemetery will have significantly less impact on community facilities than other uses permitted by right on the applicant's property.

SCOTT KNEBEL Planning staff presented report.

On August 4, 2004, the Board of County Commissioners considered the above-captioned Conditional Use request. The County Commission voted to return the request to the Metropolitan Area Planning Commission for rehearing. In particular, the County Commission is interested in the Planning Commission giving further consideration to additional conditions of approval that the protesters have requested. The County Commission also is interested in the Planning Commission giving further consideration to a revised site plan proposed by the applicant. The conditions requested by the protesters, the revised site plan, and the staff report are attached for consideration by the Planning Commission at the September 9, 2004, hearing.

There is a letter dated August 25, 2004, from the Law Office of Kaplan, McMillan and Harris, which you have attached to your report there are conditions that the protesters are wanting you to consider. Additionally there has been a revised site plan that has been submitted by the applicant in an attempt to address the protesters concerns. This is the revised site plan the primary difference deals with the pond across the front, there are a few other changes in the landscaping but the primary one is the pond. The applicant also submitted a rendering that shows what the cemetery would look like when the landscaping that it is proposing is mature.

PAUL MCCAUSLAND, 106 W. DOUGLAS STE 923, WICHITA KS 67202 I am an attorney representing Watson Funeral Home. As you have heard, this has been before the MAPC in the year 2000 when it was approved unanimously. Then again on June 10, 2004, this was approved unanimously and forwarded on to the County Commission. Up to that time, there had not been any legal counsel involved, but there had been some protests filed, and I think you have heard from some of those protesters on June 10, when this was before you at that time.

We had a brief meeting with Bob Kaplan, the attorney for the protesters before the County Commission meeting where some verbal demands were made and we were not able to agree to those. We went to the County Commission and explained what was at impasse at that time between the parties, and they decided they wanted to return this to you to hear what has been accomplished since then.

You heard that Mr. Bob Kaplan sent a letter to you that have some conditions. That is the first time anyone put into writing what conditions the protesters wanted in connection to with this cemetery. Let me talk about those briefly. The first request is that there be some screening and landscaping, that is addressed in the revised site plan and that is something the Watson Funeral Home will agree to. There was a suggestion that there be some night security lights and a gate on the driveway entrance to the cemetery, and that is something that is not acceptable. I have tried to study the zoning code and other regulations that apply to cemeteries and also what is done with other cemeteries, and I don't find any precedent for gates closing off cemetery entrances at night or requiring security lighting, so we don't agree to that. The third item has to do with phasing and staging. The request of the protesters is that all of the development start from the west and the north and work backs towards Webb Road which is where the protesters are located on Webb Road. That is not a reasonable request of a person trying to make use of their land. If the property conforms in all other respects, it is just not a reasonable request to make of a landowner, and it would be very prohibitive obviously to make something like this to work. It needs to be developed from the roadway, where the lake and the fountains will be attractive to people, so that is not something that we can agree to. The fourth request has to do with an environmental concern. They want concrete

vaults for all gravesites. That is something that would be a requirement of Watson Cemetery, and we agree to that. The fifth point is that they only want one access and that would be the driveway off of Webb Road, and we agree to that as well. The last item had to do with the crematory, which is part of the current Watson Funeral Home, and we don't think that has anything to do with what is before you today. The crematory is a federally regulated operation, by OSHA and by EPA, and it is inspected twice a year by the federal government, and it has nothing to do with how the rest of the property is developed.

You are talking about a 62-foot strip across the west boundary and 145 feet along the south boundary. There is going to be a cemetery here anyway, and Mr. Watson is going to do it as attractively as he can. He just wants to be able to use all of his land.

DOUG WATSON, 3201 S. Webb, Wichita, KS 67210 I will answer any questions.

SHERMAN I have a question about Condition #2, with the gate and it being closed off at night. I am not understanding why that is unreasonable in addition to the lighting for security reasons.

WATSON Typically, with the exception of one cemetery in Wichita, nobody gates the cemetery at night. They want access, so if people want access at 6 a.m. to see someone before they go to work or at night after 7 p.m. Cemeteries are designed for free access to people who want to go to the grave and visit their loved one. There is no other cemetery with the exception of Highland or Maple Grove, which is at 8th and Hillside, and they do it as security. It would also put an undue burden on us because we would have to make sure someone goes out there and lock it and unlock it, and it is not practical or necessary.

SHERMAN I appreciate what you are saying about that. I am not sure how many people will go and visit in the middle of the night. I am not understanding why you wouldn't want to secure it, so that there wouldn't be damage or ill will that would take place on the property after hours, especially if you are spending all this money to landscape it and make it a beautiful area to visit.

WATSON This is the entrance right here and this would serve as access to both the funeral home and to the cemetery. We have security lighting that goes clear around the perimeter of the funeral home as it is now, and we are going to put additional lighting in this area simply because it is a roadway and we want it to be lit up. I have been in this business for 25 years, and I have been to hundreds of cemeteries and nobody gates them unless there is a true theft issue.

GAROFALO Does the plan include a fence or something clear around the perimeter?

WATSON No.

GAROFALO So a gate at the entrance way still wouldn't make it totally secure. Damage has happened at cemeteries. If a gate were put there would the cemetery be secure?

WATSON I know damage happens. I suppose if they want in bad enough they can drive anywhere along 31st Street here and drive right up to the property. If somebody wants in bad enough, they are going to.

GAROFALO There will not be a wall?

WATSON No, but there will be landscaping around here, because we want people when they are visiting the cemetery to have a pleasant experience. Calvary Cemetery is along Kellogg, and there is no screening there, and you see cars zip by at 65 mph. Whereas we want to add screening, and we want to screen as much as the neighbors do. It is to my benefit when they see the trees, the fountains and the lakes of our cemetery.

BARFIELD What would be the cost to erect a gate?

WATSON Something with iron that is \$15,000 or so. For people that aren't familiar with cemeteries most of them don't have gates. I plan on selling 100 spaces a year, so this is going to be a slow development. With modern technology we sit our stones different now. It used to be that we would put the stone on the ground, and nobody would knock them over. Now we have steel rods with pens to secure them, so it is much more difficult to knock these things over.

BARFIELD Not only Maple and Grove, but other cemeteries have experienced vandalism in the last year, and I think these vandals will take the easiest point of access. I think an un-gated entrance is going to be an invitation. I don't think the cost involved would be prohibitive.

WATSON I can assure you that if I start having vandals and have issues out there, I will want to protect my property and my investment. We are going to be a funeral home/cemetery combination. I think you will find where the vandalism occurs are in stand-alone cemeteries. Our staff comes and goes 24 hours a day out of that building. A lot of times we have to go back at 2-3 a.m., so our traffic pattern is so off and on. A lot of these cemeteries that we can name are all stand-alone cemeteries where there is nobody around in the evening or at night.

HENTZEN First of all I see no need or reason for that gate. Maybe put up a motion light out there so that every time somebody comes in the driveway somebody will see it, and it will alert the office.

WATSON We already have security lighting on big poles and all the building is lit up like a shuttle launch until morning.

SHERMAN I appreciate you as a business owner and understand what you are having to do to make this work. I don't think it is unreasonable for you to consider having a gate.

ROBERT KAPLAN, KAPLAN, MCMILLAN, AND HARRIS I was not here at the previous hearing when the Planning Commission recommended approval of this Item. I did review this, and I did agree to represent these folks, and I attended the County Commission meeting. MAPC accepted the staff recommendation, and the only condition you imposed was that this property be

developed in general conformance with the site plan, and that didn't accomplish very much. First of all at the County Commission meeting Mr. Watson commented that he was not committed to that plan and that it was a generic site plan and it was for illustration only. Even if he did commit to the site plan there is no detail on the site plan or the revised site plan. That is not the type of landscape plan that we can relate to or determine anything from, so if he violates it what is going to allow enforcement? There is no duty imposed here, and if there is no duty, there is no violation. What kind of trees are going to be planted, what is the diameter of the trees, what will be the separation of the trees? At the very least, if you are going to approve this matter, let Mr. Watson submit a landscape plan for staff's approval. He can submit a plan, staff can look at it, and the neighbors can have some input.

I wrote a letter in which I listed five conditions; several of those are out of the way. The access point is okay. We don't need to deal with it. We still have issues with the screening, give me some detail. We have been talking about the gating, and it is an important consideration. I don't need a decorative gate. The neighbors don't need a \$10,000 gate. Buy some decorative chain, put a couple of decorative posts on either side of the driveway that are attractive, some 4-foot post, stretch a chain between them at night, and put a pad lock on it. That would at least keep cars out.

Security should not be an issue, some low illuminated lights, properly down shielded won't bother the neighbors and it will provide some security. A motion detector is a good idea. Then you know if people are on there, and the neighbors will do them a favor and can call him if they know it is happening.

The phasing is a big thing. We want him to start at the north and work to the south. He has 3,500 burial plots. He is going to use 100 a year. If that is the case, it will be many years, and we can preserve the buffering. When you grant a Conditional Use on "SF-20" Single-family ground, even though it is a Conditional Use, it does allow that ground to be used commercial. My clients are residential. It is currently buffered 145 feet on the south and 62 1/2 feet on the west, and if you approve it, why can't he phase that in last? I see no reason he can't start at the north work to the south, start at the east and work to the west and leave that buffering for as long as that buffering can remain available.

We had one meeting in which we identified issues, and we were going to defer and discuss resolution. I was told it was going to defer from the County Commission and Mr. McCausland called me and said no we are not going to defer it.

DONNA CASTANEDA, 1823 S RED OAKS, WICHITA KS 67207 I have some handouts and photos to show. I didn't not make enough copies. We own the adjacent property directly to the south of Mr. Watson's land. What I have are some items you have seen before except for the photos. They were taken just recently, I believe before County Commission meeting. There are a couple of articles in there from the Wichita Eagle, and my original note to the MAPC. There is also a copy of the original restrictive covenants that were placed on that property when that property was originally sold back in 1979. There are also some other items in there, the Golden Rules that you have laying on the table at each meeting, and Item 6 particularly interests me. It states, "the conformance of the requested change to the adopted or recognized Comprehensive Plan. Does the request agree with the adopted plan recommendation? If not is the plan out of date or are there mitigating circumstances which speak to the non-conformity?" In all of my dealings with getting information in regards to the protest for Mr. Watson's land, I have found in talking to the City of Wichita various departments, The Mortuary Board of Arts in Topeka, several cemetery owners, and by the way Highland Cemetery and Maple Grove that have been referenced today they are the only two cemeteries in Wichita that are owned by the City of Wichita. There are pictures there, and there is a lot of vandalism in that. As Mr. Watson has stated, the majority of cemeteries are not gated. All of the cemeteries my husband and I went to and looked at once inside the cemetery you very seldom can see whether there is a housing addition around it, a road by it. I went to the latest one that Broadway Mortuary put in out on 21st Street. It is adjacent to K-96 and 21st Street. It is a lovely cemetery, from the original trees that are there, and by the way all the cemeteries that I was in have original trees or they have screening or cement fencing up. You couldn't see the road or the highway. Mr. Watson does have staff there during the day.

I believe the biggest problem is that there are no requirements, either for a business or for a cemetery in general, for guidelines to establish, put it in and develop. Most of the land on the cemeteries that I have seen, they took existing properties where the trees were 20-30 years old. They were 15-30 feet tall. The left the screening, you couldn't see anything, or they put up a wall. That is all we are asking for.

JAMES HARDEN, 3300 S WEBB WICHITA KS 67213 I live directly across from the cemetery. There were more protests, but all of them weren't submitted on time. We had a neighborhood meeting. We are asking for a buffer and an aesthetic view. There is a lot of farmland out there. There are no trees planted out there. I can understand why he doesn't want to live in that area. His family doesn't live in that area. This is a business for him. There have been several locations, the church building west of Mr. Watson that have been burglarized three times. Also Hongs Landscaping, which is 1/4 mile west of Mr. Watson, he has all kinds of people parking on his property and drinking. There is a church just south of Mr. Watson's graveyard proposal, and they were set on fire a few years ago.

LEROY JAMES, 3250 S. WEBB ROAD, WICHITA KS 67210 My family and I live directly across from the cemetery. My family and I are opposed to the Conditional Use request. We feel that he has enough land in which to build a cemetery. We would like to see what a cemetery will look like for real and not just on the paper or in pictures. We don't know why he can't wait for 20 years to get the land rezoned.

BARFIELD Would your objections disappear if these conditions we are talking about today were imposed?

JAMES Yes.

PAUL MCCAUSLAND Let me talk about the gate first. Mr. Watson will put a gate across the driveway at the entrance to the cemetery south of the funeral home. It is better then putting it out at the street, because that will interfere with access into the funeral home area, which could be needed 24 hours. If we put a gate right south of the funeral home, it will keep people from getting into the cemetery proper. You can't really see it, but there are berms along the east property line, which people won't be able to drive over. Along the south side of the drive is going to be the columbarium area. It will have plantings and things. It is not something that you can drive over. The Wichita-Sedgwick County Unified Zoning Code permits berms for screening, and the requirement is

that if you are going to use berms that you submit a landscape plan to the Planning Director and Zoning Administrator for review and approval, and we will do that.

On the matter of security lights, I am not sure how security lights put out in the middle of a cemetery are going to help protect the neighbors. To me I would think a security light on my own property would be the best security that I could get, and I think that is something that could be deferred until it becomes apparent that there is a problem. If we keep people out of here with vehicles as much as possible, hopefully that will solve that problem.

This is not a Conditional Use that has required Supplementary Use Regulations in the Unified Zoning Code. What we are talking about here are trying to do things to accommodate these neighbors. The one thing that we really feel is unreasonable is to require us to start at the north and west with the development of this property and work to south and east. That is not the way any commercial property would develop. The lake and all the landscaping is what make this attractive. People are going to want to pick where they want there cemetery plot whether they are going to use it next week or 25 years from now.

MITCHELL Are any of the requests that you have heard today have any bearing on the land that is being part of this application? The two strips of land along the west and south side?

MCCAUSLAND I am not sure I understand the question. I think what the neighbors are saying is that we will withdraw our objections to you using these two strips if you do all of these things. None of these would be required if they were simply use the 6 acres that are already zoned "LC" Limited Commercial. The problem is to do it right and in order to make this a nice cemetery project he needs to have all the land.

WARNER Do you have a problem with a landscape plan that is detailed to where people know what you are talking about?

MCCAUSLAND That is submitted to the Zoning Administrator and the Planning Director, no.

GIBBS You say that this revised site plan does include this 2.78 acres that you are asking for the Conditional Use for?

MCCAUSLAND The original site plan that you approved was the same dimensions. The only thing that has really changed is this lake has been added. There is a gas pipeline here but it has been worked out with the owner that a lake can be put in back off of that easement, and then there will be some berms here in the front that will have plantings and things that will help make this look more attractive from the street.

GIBBS But it does include the 2.78 acres?

MCCAUSLAND Yes, part of the lake and this berm in here, in fact all of these plantings, are on this strip.

JOHNSON We approved other cemeteries in the past, was there a landscape requirement on those that you guys review?

KNEBEL Yes, there have been and that is because the other cemeteries that have been approved recently were approved in the City of Wichita, which has the Landscape Ordinance, which requires landscaping. Sedgwick County does not a Landscape Ordinance.

JOHNSON Since the County does not have a Landscape Ordinance, how are you going to address that?

MILLER Our intention was if this was the approved site plan, then they would have to identify the plant material and submit that prior to us releasing the Conditional Use for them to be allow to get a permit to move ahead.

KNEBEL I have some additional information. Donna tells me that she has done a couple of cemeteries in the County for which MAPC required landscape plans.

HENTZEN John, did you present this to County Commission?

SCHLEGEL I did.

HENTZEN Could you tell us what they actually requested.

SCHLEGEL They were not sure how to resolve the issue. What they were hearing was the applicant and the neighbors disputing about what should be done, and I think they were looking to send it back to the Planning Commission in order to see whether or not this Board could bring this to a resolution. I think they were trying to buy some time so that the neighbors and the applicant could continue to meet to see if things could get resolved.

HENTZEN If it goes back to the County Commission how many votes over there will it take to approve?

SCHLEGEL There is still at protest petition.

KNEBEL It will require 4 out of 5 votes to approve.

GAROFALO Did the County Commission not want us to look specifically at these conditions?

SCHLEGEL They have not seen this letter from Mr. Kaplan, at the time that I presented this to County Commission, they did not have this letter.

GAROFALO Where some of these conditions discussed at the County Commission meeting?

SCHLEGEL Yes, most of the things that were discussed today. They would like you to try and resolve these issues.

MOTION: To approve, subject to staff comments and citing the findings in their report and subject to the following conditions.

JOHNSON moved, **MARNELL** seconded the motion.

1. The site shall be developed in general conformance with the approved site plan.
2. The landscaping shown on the approved site plan for screening from adjoining properties shall be installed per a landscape plan approved by the Planning Director.
3. A chain security gate shall be installed at the access drive to the cemetery south of the funeral home.
4. All burial plots shall utilize a concrete burial vault.
5. Vehicular access to the subject property shall be limited to the single existing access drive to Webb Road.
6. Development and use of the subject property shall be in accordance with all applicable federal, state, and local rules and regulations, including building and construction codes, health codes, and operational standards.
7. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

MOTION CARRIED: 11-0

8. **Case No.: ZON2004-41** – New Market V LLC, c/o George Sherman (vice president); PEC, PA, c/o Rob Hartman (agent) Request Zone change from “SF-5” Single-family Residential to “GO” General Office on property described as;

The Southwest Quarter of the Southeast Quarter of Section 31, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas. Generally located North of 29th Street North and Parkdale.

BACKGROUND: The applicant requests “GO” General Office zoning on a 40-acre unplatted site, currently zoned “SF-5” Single-Family Residential, for an office park development. The application area is north of 29th Street North and ¼ mile west of Maize Road.

North of the application area are several large lot suburban single-family homes within the City of Maize. South of the application area, across 29th Street North is undeveloped SF-5 zoned property, and an approved commercial CUP (Spencer’s Cove, DP-269). East of the application area are several large lot, SF-20 zoned, suburban residences, several of which are proposed for a health club development. West of the application area is SF-5 zoned property, in the process of platting as the Fontana Addition. South of 29th Street North, the entire west side of Maize to 21st Street North is either under commercial development, or in the process of requesting commercial development. Development patterns would lead one to believe that the northwest corner of Maize and 29th will develop with commercial uses as well. The US Army Corps of Engineers has notified staff that the application area, as well as surrounding areas, is classified as a jurisdictional wetland, requiring a permit for development.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: City of Maize	Suburban single-family residential
SOUTH: “LC”, “SF-5”	Vacant commercial and vacant single-family residential
EAST: “SF-20”	Suburban single-family residential
WEST: “SF-5”	Vacant single-family residential

PUBLIC SERVICES: Current traffic counts on 29th Street North are unavailable. Projected provisional traffic volumes for 2030 on 29th Street North west of Maize Road would be 11,000 vehicles per day.

Existing half width right of way (ROW) is 30 feet on 29th Street North.

Other normal public services are available or are in process of being extended to the site.

CONFORMANCE TO PLANS/POLICIES: The “Wichita Land Use Guide, as amended 1/02” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for “low density residential” development.

The Office Locational Guidelines of the Comprehensive Plan recommend that office sites be generally located adjacent to arterial streets. The plan recommends that large-scale office development should be encouraged to locate within the CBD. Local, service oriented offices should be incorporated within or adjacent to neighborhood and community scale commercial development. And, low-density office use can serve as a transitional land use between residential uses and higher intensity uses.

The Unified Zoning Code (UZC) would require compatibility setbacks between non-residential and residential development, as well as screening requirements for office development at this site. The Access Management Policy would limit the number of access points and their spacing along 29th Street North. The Landscape Code would require a landscape plan consistent with that code for office development at the application area. And, the Sign Code would limit signage for office development at this site.

RECOMMENDATION: The proposed zone change is not in conformance with the "Wichita Land Use Guide" recommendation of low-density residential use; it is in conformance with the recommended office locational guidelines. Office use at the application area would buffer residential uses to the north and west from more intense commercial development to the south and east of the application area. Increased traffic on this section of 29th Street North can be mitigated with widening through dedication of right of way, bringing 29th Street North to the City standard of 60-foot half width ROW.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting with in one year, and subject to dedication 30 feet of right of way on 29th Street North.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This proposal is not consistent in terms of zoning, uses, or character with large lot suburban residential development to the east and north. This proposal is a good buffer use between residential uses to the north and proposed residential development to the west from the more intense commercial development to the east and south.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with single-family use as currently zoned. However, single-family use at this site would border commercial uses to the south, across 29th Street North; and would potentially border commercial development to the east, at the 29th and Maize intersection.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and office development could have a negative effect on the single-family residential uses north and east of the application area; and could have a negative effect on future residential development south and west of the site. However, road improvements and code requirements for compatibility setbacks, screening, landscaping, and signage limitations should mitigate that impact.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development, which is not in conformance with requested zoning. The proposed development is generally in accordance with the office locational guidelines of the plan.
5. Impact of the proposed development on community facilities: The traffic increases from the proposed development would be significant. Proposed right of way dedication and widening on 29th Street North should mitigate increased traffic problems. Other community facilities are being extended to serve new development in the vicinity.

GEORGE SHERMAN, New Market V LLC, (vice president) I will answer any questions you may have.

MARK WOODARD, 2937 N. CARDINGTON CT, WICHITA KS 67205 When we moved in we were under the impression that this would stay residential. We don't know if this will have a negative effect on our residential property. We are worried about the traffic and the traffic flow problem. We do believe that there will be further development along Maize Road and that it will be commercial. Also with the opening of the Super-Target that will add to traffic flow. We also believe that 119th Street will go commercial. The one thing that we didn't point out this piece of land right here is owned by the Catholic Diocese and we are under the opinion that when enough people move into that area a church/school will be there and the kids and traffic will increase. So I would like some of those concerns addressed.

SHERMAN This road is going to turn into a 5-lane road some point that will be designed to handle the traffic. Baughman Company is in the process of designing that. Any office development that we do on here will require a Landscape Plan to the City for approval.

GAROFALO Do you know what kind of office development this will be?

SHERMAN We don't have a specific use, tenant or office plan, we have done some layouts. There will have be a detention pond constructed in here. This will be a typically office park.

GIBBS There will be no plans for retail development, Q-Trip?

SHERMAN No, it will be general office zoning and that will not be allowed.

MOTION: To approve subject to conditions.

MCKAY moved, **MARNELL** seconded the motion, and it carried (11-0).

9. **Case No.: ZON2004-42** – Russell Investments (owner/applicants) Baughman Company, PA (agent) Request Sedgwick County Zone change from "SF-20" Single-family Residential to "LC" Limited Commercial on property described as;

A tract of land in the NE/4 of Section 33, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning at the SE corner of Lot 1, Block 1, Hoskinson 2nd Addition, Sedgwick County, Kansas;

thence westerly along the south line of said Lot 1, and as extended westerly, 142.26 feet; thence southerly with a deflection angle to the left of 90 degrees 38'15", 179.33 feet; thence southerly with a deflection angle to the left of 06 degrees 24'27", 171.76 feet; thence southerly with a deflection angle to the right of 07 degrees 24'54", 115.48 feet; thence southeasterly with a deflection angle to the left of 32 degrees 43'13", 211.65 feet to a point normally distant west of the east line of said NE/4; thence northerly parallel with the east line of the NE/4, 644.09 feet to the point of beginning. Generally located West of Ridge Road, midway between 29th Street North and 37th Street North.

BACKGROUND: The applicant requests a zone change from "SF-20" Single-family Residential to "LC" Limited Commercial on a 1.6-acre unplatted tract located midway between 29th Street North and 37th Street North, on the west side of Ridge Road. The subject property is currently developed as part of a sand pit, with an open-air pavilion on it. The applicant has no specific use for the proposed zoned change.

The surrounding area is characterized by The Big Slough North drainage, sandpits and retention ponds/drainage reserves, large undeveloped industrial and single-family residential tracts, commercial and office developments, medical and dental services, mixed with the predominate single-family residential developments and small duplex and multi-family residential development. The subject site is within a remnant of Sedgwick County (District IV) now surrounded by the City of Wichita. Nonresidential construction is a recent development, with building beginning in 2000 and continuing to the present. Residential construction appears to have begun in the 1990s and continues to the present. There has been no industrial development in the area. Railroad right-of-way (ROW) runs northwest to southeast through the area. The undeveloped industrial portion of the area abuts and runs parallel to the railroad ROW.

The large tract abutting the west side of the subject property is zoned "SF-20" and is a large sandpit, established by Conditional Use CU-293. The subject site is a part of this tract. The undeveloped property abutting the south side of the subject site is zoned "SF-20" property and is also a part of the above-mentioned large tract with its Conditional Use/sand pit. The applicant has requested a zone change to "LI" Limited Industrial on this southern 6.8-acre abutting property. This request is on today's agenda as ZON2004-39. Properties east of the subject site and across Ridge Road are zoned "LC" and "GO" General Office with a Community Unit Plan overlay, CUP DP-237. Development on these eastern properties includes small one-story commercial/office strips housing a gym, medical and dental offices, a pharmacy, a diet and nutrition center and a convalescent home. There are a few unoccupied spaces in the commercial/office strips that are still under construction. Property north of the site is zoned "NR" Neighborhood Retail and "LC" and is part of CUP DP-242. Development includes dental and medical services, office, a school and undeveloped "LC" property.

CASE HISTORY: The subject property is not platted. A Conditional Use, CU-293, for the subject site and the larger area around it was approved by the Board of County Commissioners (BCCO) August 8, 1986. The subject site was zoned "R-1" Urban Residential at that time. The "R-1" zoning district became the "SF-20" and "SF-10" Single-family zoning districts with the zoning district conversions in 1996. The Board of County Commissioners approved a zone change, for the subject site and the larger area around it, from "SF-20" to "B" Multi-family Residential, SCZ-0739, with a Community Unit Plan overlay, CUP DP-245, June 7, 2000. A conditional of approval for the zone change and the CUP was the platting of the property. SCZ-0739 and CUP DP-245 were denied and closed because the property was never platted.

ADJACENT ZONING AND LAND USE:

NORTH: "NR", "SF-20" & "LC"	Undeveloped, sand pit, office, medical, dental, school
SOUTH: "SF-20"	Undeveloped, sand pit
EAST: "LC" & "GO"	strips with office, medical, dental, health
WEST: "SF-20"	Undeveloped, sand pit

PUBLIC SERVICES: The site has direct access to Ridge Road, a four-lane arterial street with current traffic volumes of approximately 12,450 vehicles per day at this location. The 2030 Transportation Plan estimates traffic volumes will increase to approximately 18,000 vehicles per day on Ridge Road. The impact of the proposed Northwest Bypass has not been calculated 2030 traffic volumes. The subject property has access to public sewer service. Public water will have to be extended to the subject site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "High Density Residential" development. The current zoning request of "LC" for the 1.6-acre subject site, does not match the Comprehensive Plan's recommended development. The small, irregular shaped subject site with a sand pit on its east and south sides and Ridge Road on its west side would be difficult to develop as multi-family residential. These factors plus the proposed "LI" zoning to the south of the subject site and the "NR" zoning and development to the north of the subject site isolate its current "SF-20" zoning and makes the site less attractive to develop as single-family residential. The proposed "LC" zoning matches up with existing "LC" zoning east of it across Ridge Road and the "NR" and "LC" zoning north of it.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to platting within one year and the provisions of Protective Overlay PO#146. All the properties adjacent to the subject site zoned "LC", "GO" and "NR" have CUP overlays on them and even though subject site's relative small size and long, narrow configuration will limit development opportunities a Protective Overlay would ensure that future development on the site will be in line with the surround area's standards. The provisions of PO#146 are:

- (1) All signs 20-foot maximum height and monument style. No pole signs permitted. No flashing signs (except for signs showing the date, time, temperature and other public service messages), rotating or moving signs, signs with moving lights, or signs that create the illusion of movement. No portable or off site signs.
- (2) Trash receptacles will have solid screening around them, with materials that are compatible with the materials used on the structures on the site.
- (3) All utilities shall be installed underground.

- (4) Building materials shall be compatible with those used in the adjacent commercial and office developments.
- (5) All mechanical equipment shall have solid screening.
- (6) All permitted uses in the "LC" district except pawnshops, second hand stores and adult entertainment.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by recent and continuing developments of office, medical and dental services within the "NR", "GO" and "LC" zoned properties, most of which have CUP overlays. The predominate development in the area is single-family residential, that began in the 1990s and is continuing today in the "SF-5" zoned properties. There are still large undeveloped tracts of "SF-20" and "LI" zoned properties in the area. Drainage features are prominent.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-20" Single-family Residential, and is currently part of a larger undeveloped "SF-20" zoned tract that contains a sandpit. Due to its location next to this large sand pit, a drainage channel and its abutting an arterial street (all of which have limited its size and given it a long narrow configuration) plus its close proximity to industrial and commercial zoning and uses, make it is unlikely that the subject property will develop as single-family residential.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The affects will be minimal with the provisions of the Protective Overlay applied.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "High Density Residential" development. The requested "LC" zoning meets most of the locational criteria of the Comprehensive Plan, although the pre-existing "LI" zoning south of the subject site and located at the mid-mile point along Ridge Road, does give the area an unusual zoning pattern. This industrial zoning south of the subject site allows the proposed "LC" zoning to act as a buffer for the "NR" zoning on its north side.
5. Impact of the proposed development on community facilities: Drainage will be issue in the development of this site.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **MITCHELL** seconded the motion, and it carried (11-0).

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10. **Case No.: ZON2004-39** – Russell Investments (owners/applicants) Baughman Company PA (agent) Request Sedgwick County Zone change from "SF-20" Single-family Residential to "LI" Limited Industrial on property described as;

A tract of land in the Northeast Quarter of Section 33, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning at the NE corner of Lot 1, Block A, Ridge Port Commercial Park, Wichita, Sedgwick County, Kansas: thence westerly along the north line of said Block A, 1022.00 feet to a point 30.00 feet west of the NW corner of Lot 4 in said Block A; thence northerly parallel with the extended west line of Lot 4, 55.11 feet; thence northeasterly with a deflection angle to the right of 34 degrees 26'05", 333.86 feet; thence easterly parallel with the south line of said NE/4, 718.01 feet; thence southeasterly with a deflection angle to the right of 57 degrees 38'40", 211.65 feet to a point 60.00 feet normally distant west of the east line of said NE/4; thence southerly parallel with the east line of said NE/4, 149.68 feet to the point of beginning. Generally located West of Ridge Road, midway between 29th Street North and 37th Street North

BACKGROUND: The applicant requests a zone change from "SF-20" Single-family Residential to "LI" Limited Industrial on a 6.8-acre unplatted tract located midway between 29th Street North and 37th Street North, on the west side of Ridge Road. The subject property is currently developed as part of a sand pit. The applicant proposes the zoned change to allow expansion of the undeveloped existing "LI" zoning abutting the subject property's south side.

The surrounding area is characterize by The Big Slough North drainage, sandpits and retention ponds/drainage reserves, large undeveloped industrial and single-family residential tracts, commercial and office developments, medical and dental services, mixed with the predominate single-family residential developments and small duplex and multi-family residential development. The subject site is within a remnant of Sedgwick County (District IV) now surrounded by the City of Wichita. Nonresidential construction is a recent development, with building beginning in 2000 and continuing to the present. Residential construction appears to have begun in the 1990s and continues to the present. There has been no industrial development in the area. Railroad right-of-way (ROW) runs northwest to southeast through the area. The undeveloped industrial portion of the area abuts and runs parallel to the railroad ROW.

The large tract abutting the north and west sides of the subject property is zoned "SF-20" and is a large sandpit, established by Conditional Use CU-293. The subject site is a part of this tract. An isolated section of the "SF-20" zoned tract, across the sand pit and a drainage channel northeast of the subject site, is also a part of the above-mentioned large tract with its Conditional Use/sand pit. The applicant has requested a zone change to "LC" Limited Commercial on this northern 1.6-acre adjacent property. This request is on today's agenda as ZON2004-42. Properties east of the subject site and across Ridge Road are zoned "LC" with a Community Unit Plan overlay, CUP DP-237 and "SF-5" Single-family Residential. Development on these eastern properties includes small one-story commercial/office strips housing a gym, medical and dental offices, a pharmacy, a diet and nutrition center and a convalescent home. There are a few unoccupied spaces in the commercial/office strips that are still under construction. Property abutting the south side of the subject property is zoned "LI" and is not developed. This undeveloped "LI" zoning continues southeast across Ridge Road.

CASE HISTORY: The subject property is not platted. A Conditional Use, CU-293, for the subject site and the larger area around it was approved by the Board of County Commissioners (BCCO) August 8, 1986. The subject site was zoned "R-1" Urban Residential at that time. The "R-1" zoning district became the "SF-20" and "SF-10" Single-family zoning districts with the zoning district conversions in 1996. The Board of County Commissioners approved a zone change, for the subject site and the larger area around it, from "SF-20" to "B" Multi-family Residential, SCZ-0739, with a Community Unit Plan overlay, CUP DP-245, June 7, 2000. A conditional of approval for the zone change and the CUP was the platting of the property. SCZ-0739 and CUP DP-245 were denied and closed because the property was never platted.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20"	Undeveloped, sand pit
SOUTH: "LI"	Undeveloped
EAST: "LC" & "SF-5"	commercial/office strips, retention pond, multi-family, duplex, single-family residential
WEST: "SF-20"	Undeveloped, sandpit

PUBLIC SERVICES: The site has no direct access to Ridge Road, a four-lane arterial street with current traffic volumes of approximately 12,450 vehicles per day at this location. The 2030 Transportation Plan estimates traffic volumes will increase to approximately 18,000 vehicles per day on Ridge Road. The impact of the proposed Northwest Bypass has not been calculated 2030 traffic volumes. The subject property has access to public sewer service. Public water will have to be extended to the subject site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "High Density Residential" development. The current zoning request of "LI" for the 6.8-acre subject site, does not match the Comprehensive Plan's recommended development. The subject site's location between the south end of the large sand pit and the large undeveloped "LI" zoned tract on its south side make it less attractive to develop as multi-family residential or as single-family residential with its current zoning of "SF-20". The proposed "LI" zoning matches up with previously mentioned undeveloped "LI" zoning abutting the subject site's south side. The "LI" zoning south of the subject site was established while the site was in the county and its located at the mid-mile point along Ridge Road, does give the area an unusual zoning pattern. The existing "LI" zoned tract's proximity to the railroad ROW, a four lane arterial and another large "LI" tract (south and east across Ridge Road) meets the intent of the Industrial Locational Guidelines of the Comprehensive Plan. The "Industrial Locational Guidelines" of the Comprehensive Plan indicate that industrial areas should be located in close proximity to support services and away from planned residential areas. The residential development in the area has occurred after most of the area (the exception being this remnant of Sedgwick County of which the subject site is part of) was annexed into the City and has grown around the existing "LI" zoning.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year and subject to the following provisions of a Protective Overlay PO#145:

1. The following uses permitted in the "LI" Limited Industrial District shall not be permitted on the subject property: funeral home, hotel or motel, kennel (boarding/breeding/training), night club, pawnshop, tavern and drinking establishment, vehicle and equipment sales (outdoor), asphalt and concrete plant (general), gas and fuel storage and sales, landfill, mining or quarrying, oil or gas drilling, rock crushing, solid waste incinerator, transfer station, vehicle storage yard, and agricultural processing.
2. The subject property shall have a building setback of 20-feet on the north, east and west sides.
3. All outdoor storage uses on the subject property shall be screened on all sides by a solid screening wall or fence constructed of standard building materials customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco, concrete, or wood.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by recent and continuing developments of office, medical and dental services within the "NR", "GO" and "LC" zoned properties, most of which have CUP overlays. The predominate development in the area is single-family residential that began in the 1990s and is continuing today on the "SF-5" zoned properties. There are still large undeveloped tracts of "SF-20" and "LI" zoned properties in the area. Drainage features are prominent.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-20" and is currently part of a larger undeveloped "SF-20" zoned tract that contains a sandpit. Due to its location next to this large sand pit, a drainage channel (all of which have limited its size and given it a long configuration) and its abutting the undeveloped industrial zoning to its south, it unlikely that the subject property will develop as single-family residential.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The provisions of a Protective Overlay will limit uses and increase setbacks and screening standards, which will help limit detrimental affects on nearby residential zoned properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "High Density Residential" development. The existing "LI" zoning abutting the south side of the subject site was in place prior to the surrounding area being annexed into the City. The "LI" zoning located at the mid-mile point along Ridge Road gives the area an unusual zoning and development pattern, which is predominately low density residential with "NR", "GO" and "LC" zoning with CUP overlays and "LI" zoning along most of the Ridge Road frontage. The "LI" zoned tract's proximity to the railroad ROW, a four lane arterial and another large "LI" tract meets the intent of the Industrial Locational Guidelines of the Comprehensive Plan. The Industrial Locational Guidelines of the Comprehensive Plan indicate that industrial areas should be located in close

proximity to support services. The requested "LI" site does not meet the criteria of being away from planned residential areas, but its unique location, relative small size and the provisions of the Protective Overlay serve as a buffer to the undeveloped "SF-20" property west of the site.

5. Impact of the proposed development on community facilities: Drainage will be issue in the development of this site.

DALE MILLER Planning Staff presented for BILL LONGNECKER, this can be taken as consent except for the fact the when the original staff report was written hotel/motel was an excluded use and the applicant has asked for it to be point back in and we are okay with that and we would amend the staff report to include that use as a permitted use.

MOTION: To approve as amended by staff.

JOHNSON moved, **HENTZEN** seconded the motion, and it carried (11-0).

11. **Case No.: ZON2004-38** – Twenty First Growth LLC (Tim Buchanan); MKEC Engineering Consultants Inc. (Greg Allison) Request Zone change from "SF-5" Single-family Residential to "GO" General Office on property described as;

All of the South 231.25 feet of Reserves G and H, Hawthorne Addition, an Addition to Wichita, Sedgwick County, Kansas. Generally located 750 feet east of 127th Street East and north of 21st Street.

BACKGROUND: The applicant is seeking GO General Office zoning and is vacant. The application area is .64 of an acre located 750 feet east of 127th Street East, north of 21st Street North. This land was originally platted as street right-of-way (Lindsay Circle), and a reserve area that were included in the Hawthorne Addition. In the Hawthorne Addition, Lindsay Circle was a street that intersected with 21st Street and ran northward. Now, the application area is included in a re-plat (Hawthorne Fourth Addition) of a portion of the Hawthorne Addition that eliminates the southern-most 300 feet of Lindsay Circle street right-of-way that makes Lindsay Circle a southbound street with an intersection with Camden Chase to the north), and eliminates the reserve area that originally encumbered the application area. In the original Hawthorne Addition plat, Lindsay Circle was a cul-de-sac street that intersected with 21st Street and went northward, ending in a cul-de-sac. In summary, the replat eliminates Lindsay Circle right-of-way, the Lindsay Circle intersection with 21st Street, and the reserve area initially set aside for utilities, drainage and open space.

The property located immediately east of the site is already zoned "GO," and the application area is to be added to that that property (Lot 9, Hawthorne Fourth Addition) to expand the 21st Street "GO" zoning by approximately 125 feet to a total of 440 feet of 21st Street frontage.

CASE HISTORY: The Hawthorne Addition was recorded in December 2002. The Hawthorne Fourth Addition is currently awaiting City Council action.

ADJACENT ZONING AND LAND USE:

NORTH: SF-5 Single-family Residential; vacant
SOUTH: LC Limited Commercial;
EAST: GO General Office;
WEST: LC Limited Commercial;

PUBLIC SERVICES: 21st Street is a paved two-lane arterial. There are no capital improvement projects scheduled for this segment of 21st Street in the next five years. The 2030 Transportation Plan depicts 21st Street as being a five-lane arterial. Water service is available. Sewer service is available, but there is a limit on the number of lots that can be serviced until improvements are made downstream. However, since this action does not create a new lot, this zoning request should not negatively impact that service.

CONFORMANCE TO PLANS/POLICIES: The Planning Commission has a policy of supporting the expansion of existing businesses. This tract is vacant, but the request would provide additional GO zoned land to an expanded lot that is already zoned GO. If the request is not approved, the lot could have split zoning.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding properties are zoned a mix of districts - LC Limited Commercial, SF-5 Single-family Residential and GO General Office. Much of the adjoining property is vacant, but the area is beginning to develop.
2. The suitability of the subject property for the uses to which it has been restricted: Given the circumstances caused by the vacation, the lot could end up with split zoning if the request is not approved. The majority of the lot to which the application area is to be attached is already zoned GO. To leave the site zoned as is would not be an optimal situation.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The size of the request, at just over one-half acre, minimizes any detrimental impacts.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Planning Commission has a policy of supporting the expansion of existing businesses. This tract is vacant, but the request would provide additional GO zoned land to an expanded lot that is already zoned GO.
6. Impact of the proposed development on community facilities: None identified. Existing and planned services are adequate to address projected demands.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **MITCHELL** seconded the motion, and it carried (11-0).

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- 12a. Case No.: CUP2004-39 DP279 (Associated with ZON2004-44)** – Slawson East, Inc, c/o George Sherman (owner); Professional Engineering Consultants, PA, c/o Rob Hartman (agent) Request Creation of the Slawson East Commercial Community Unit Plan on property described as;

and

- 12b. Case No.: ZON2004-44 (Associated with CUP2004-39 DP279)** - Slawson East, Inc, c/o George Sherman (owner); Professional Engineering Consultants, PA, c/o Rob Hartman (agent) Request Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

Lots 1, 2, 3, 4, 5 and 6, Block A and Reserve A, Eastside Community Church Addition to Wichita, Sedgwick County, Kansas

TOGETHER WITH

Lot 1, Block A, First Bible Baptist Church Addition, Sedgwick County, Kansas. Generally located On the southeast corner of 21st Street North and Greenwich Road.

BACKGROUND: The applicant is requesting to create a 13-parcel Community Plan containing approximately 59 acres. The property is located on the south side of 21st Street North between Greenwich Road and K-96. Parcel 12 (29 acres) is the main parcel. Eight small parcels are located along 21st Street North; three parcels are located along Greenwich. These small parcels average 1.3 acres in size. Parcel 13 (13 acres) is located along K-96 south of Parcel 12. The land at the extreme southeast corner of the intersection of Greenwich and 21st Street North is a 1.3-acre exception tract not included in the CUP.

The applicant has requested "LC" Limited Commercial zoning for all parcels. Requested uses would be use permitted by-right in the LC, Limited Commercial district except for correctional placement residence, outdoor storage, pawnshops, taverns, night clubs, asphalt or concrete plants, sexually oriented businesses and adult entertainment; service stations, convenience stores with gas islands, and vehicle service or repair would be limited to a combined maximum of three such uses and restricted to placement within Parcels 1-11; and restaurants with drive-in windows would be prohibited within 200 feet of residential zoning unless separated by an arterial street. Vehicle storage yards and general vehicle repair would be prohibited by the CUP and by the LC zoning.

All freestanding signs are to be monument type signs spaced a minimum of 150 feet apart. Two signs 45 feet in height with 325 square feet in maximum sign face are requested along K-96. Signs 30 feet in height with 300 square feet of maximum sign face are requested for the three major entrances on 21st and the main entrance on Greenwich. The remaining signs would be 20 feet in height with 200 square feet maximum sign face. Total signage would be limited to 0.8 times lineal frontage. Wall signs would be prohibited on the back of any façade facing residential zoning. Window signage is limited to 25 percent of the window area. Billboards and portable signs would be prohibited.

Compatibility is provided for architecture, landscaping, parking lot lighting and signage. Maximum building coverage and gross floor area is approximately 20 percent for Parcels 1-11. Coverage is 30 percent for Parcels 12 and 13, and gross floor area is 35 percent. Requested building height is 35 feet for Parcels 1-12, and 55 feet for Parcel 13. Setbacks are 35 feet along the streets and exterior property boundaries. Masonry screening walls would be required on exterior property lines per Unified Zoning Code unless parcels are developed with residential use. Cross-lot circulation and a pedestrian circulation plan are required for all parcels within the CUP.

The site is currently vacant but is part of the developing commercial node at 21st and Greenwich. It is bordered by K-96 on the east, a cemetery zoned "SF-5" Single-family Residential, and a bank, and vacant commercial property zoned "LC" Limited Commercial on the north. The property to the west, DP-274 Oak Creek and DP-266 The Woodlands is approved for a mixed-use development split fairly evenly between commercial (53 acres), office (41 acres) and residential (40 acres). The property to the south is a large residential estate, however, a request for rezoning to "LC" and a CUP (DP-277 Bruce Brown Property CUP) was recommended for approval by MAPC on August 29, 2004. More commercial development is occurring between 21st Street North and K-96, including a SuperTarget on the northwest corner of the 21st/Greenwich intersection. East of K-96, a bank is being constructed along 21st in DP-256, The Collective CUP, and large medical facility is being constructed on property zoned "GO" to the south of The Collective.

CASE HISTORY: Most of the property is platted as Eastside Community Church Addition, recorded October 29, 1998. The eastern part is unplatted. The property is subject to a protective overlay, P-O #28 (SCZ-0755 approved December 10, 1997). The CUP would replace the P-O provisions.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"; "SF-5"	Cemetery, bank, vacant
SOUTH: "SF-5"; "SF-20"	Residential estate
EAST: "LC"; "GO"	Bank and medical office under construction, vacant
WEST: "SF-20"	Vacant

PUBLIC SERVICES: 2002 traffic counts for 21st Street North were 4,241 cars per day. The 2030 projection for 21st Street North was 22,000 vehicles per day. These projections do not account for proposed and likely new developments being discussed in this vicinity, which would likely have increased the projections for traffic volumes significantly.

A traffic study for the 21st/Greenwich corridor was recently completed to identify improvements needed to accommodate increased traffic in the corridor, but the projected volumes for this tract used in the traffic study were significantly less than for uses proposed by this CUP (and the one filed for the abutting property to the north and east). The projections were based on 15 acres of commercial, 80 acres of office and 40 acres of residential. DP-279 requests 59 acres of commercial, and the application pending for the abutting property requests 68 acres of commercial. If developed in this manner, using the average peak volumes in/out for commercial use used in the traffic study, the trips in would be a five-fold increase and the peak trips out would double. (Note: the apparent discrepancy is because office use, which was 80 acres in the original study, have ten times the trips out as trips in during the peak hour, indicating a larger spread in arrival times to office uses but more uniformity in departure times.)

Currently, Greenwich is improved as a two-lane county arterial across the frontage of this proposed development. Six openings (three right-in/right-out only) on 21st and two openings (one right-in/right-out only) on Greenwich are requested. The access points generally conform to the access management policies for urban standards and align with the property to the west of Greenwich. 21st Street North is a 4/5 lane arterial with continuous center left-turn lane from K-96 to Greenwich.

Improvements are proposed for Greenwich to be constructed in 2005 as a 4/5 lane arterial road. Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "commercial", "institutional", and "low density residential". The project is in conformance with this recommendation except for Parcels 1 and 2 ("institutional") and Parcel 13 ("low-density residential").

Commercial Objective III.B encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed CUP is in general conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines for minimizing detrimental impacts and planned development.

RECOMMENDATION: The proposed CUP is similar in intensity to development approved or underway, although the land immediately east of Parcel 13 and K-96 is being developed for office use rather than retail. It is generally in conformance with the Comprehensive Plan except that it increases the depth of commercial use allowed along K-96 and replaces the tract shown as "institutional" with "commercial". Originally, staff had requested a street connection between the Crosspointe and the proposed development to the south. However, the proposed site development pattern for Crosspointe, drainage requirements and limitations on access locations on 21st Street North constrained the possibility of this alignment. Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2004-44) subject to platting of the entire property within one year;
- B. APPROVE the Community Unit Plan (DP-274), subject to the following conditions:
 1. The applicant shall guarantee for a continuous accel/decel lane at major entrances on 21st Street North and Greenwich Road and southbound center left-turn lane at major openings on Greenwich Road at time of platting.
 2. The applicant shall guarantee proportionate share of traffic signalization for major openings at the time of platting.
 3. Modify P-O #28 to eliminate those portions governed by the CUP.
 4. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 5. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
 6. All property included within this CUP and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
 7. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-279) includes special conditions for development on this property.
 8. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is currently vacant but is part of the developing commercial node at 21st and Greenwich. It is bordered by K-96 on the east, a cemetery zoned "SF-5" Single-family Residential, and a bank, and vacant commercial property zoned "LC" Limited Commercial on the north. The property to the west, DP-274 Oak Creek and DP-266 The Woodlands is approved for a mixed-use development split fairly evenly between commercial (53 acres), office (41 acres) and residential (40 acres). The property to the south is a large residential estate, however, a request for rezoning to "LC" and a CUP (DP-277 Bruce Brown Property CUP) was recommended for approval by MAPC

on August 29, 2004. More commercial development is occurring between 21st Street North and K-96, including a SuperTarget on the northwest corner of the 21st/Greenwich intersection. East of K-96, a bank is being constructed along 21st in DP-256, The Collective CUP, and large medical facility is being constructed on property zoned "GO" to the south of The Collective.

2. The suitability of the subject property for the uses to which it has been restricted: The area is rapidly developing with commercial uses. The suitability for residential use is reduced by the commercial development underway in all directions. Originally two tracts were intended as church sites, but the churches determined the property was suited for higher intensity retail/commercial use and have sold the tracts.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The cemetery is potentially impacted by the development, and the CUP has mitigated the intensity by some of the use restrictions in General Provision #3.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "commercial", "institutional", and "low density residential". The project is in conformance with this recommendation except for Parcels 1 and 2 ("institutional") and Parcel 13 ("low-density residential"). **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed CUP is in general conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines for minimizing detrimental impacts and planned development.
5. Impact of the proposed development on community facilities: The increased traffic from higher intensity of use than projected by the traffic study can be addressed by accel/decal lanes, left-turn lanes and possible signalization.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **MITCHELL** seconded the motion, and it carried (11-0).

13a. Case No.: CUP2004-36 DP278 (Associated with ZON2004-40) – Infinity Financial – Wichita c/o Rod M. Stewart (owner); B.W.I. Inc. c/o Charles F. Badeen (applicant); Gene Razook (agent) Request Creation of the NewMarket V Community Unit Plan on property described as;

(C.U.P. LEGAL ONLY)

PART OF THE NORTH HALF OF THE NORTHEAST QUARTER, SECTION 6, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS; DESCRIBED AS:
COMMENCING AT THE NORTHEAST CORNER OF SECTION 6, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS; THENCE BEARING N89 degrees 46'15"W, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 40.00 FEET; THENCE BEARING S01 degrees 24'27"W, PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING; THENCE BEARING N89 degrees 46'15"W, PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 175.00 FEET; THENCE BEARING N81 degrees 14'24"W, A DISTANCE OF 101.12 FEET; THENCE BEARING N89 degrees 45'15"W, PARALLEL TO THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 14.68 FEET; THENCE BEARING S01 degrees 24'27"W, PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 599.99 FEET; THENCE N89 degrees 46'15"W, A DISTANCE OF 358.94 FEET; THENCE BEARING S01 degrees 24'27"W, PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 656.12 FEET TO THE NORTH LINE OF LOT 21, BLOCK 9, EVERGREEN ADDITION; THENCE BEARING S89 degrees 47'16"E, ALONG THE SAID NORTH LINE OF LOT 21, BLOCK 9, EVERGREEN ADDITION, A DISTANCE OF 613.92 FEET TO A POINT 75.02 FEET WEST OF THE EAST LINE OF THE SAID NORTHEAST QUARTER; THENCE BEARING N03 degrees 19'23"E, A DISTANCE OF 1047.19 FEET; THENCE N01 degrees 24'27"E, A DISTANCE OF 195.04 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINING 577,896 SQUARE FEET OR 13.27 ACRES MORE OR LESS. Generally located South of 29th Street North and west of Maize Road.

and

13b. Case No.: ZON2004-40 (Associated with CUP2004-36 DP278) - Infinity Financial – Wichita c/o Rod M. Stewart (owner); B.W.I. Inc. c/o Charles F. Badeen (applicant); Gene Razook (agent) Request Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

SF-5 to L.C. ZONING legal only

PART OF THE NORTH HALF OF THE NORTHEAST QUARTER, SECTION 6, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS; DESCRIBED AS:
BEGINNING AT THE NORTHEAST CORNER OF SECTION 6, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS; THENCE BEARING N89 degrees 46'15"W, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 330.00 FEET; THENCE BEARING S01 degrees 24'27"W, PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 660.00 FEET; THENCE BEARING N89 degrees 46'15"W, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 358.94 FEET; THENCE BEARING S01 degrees 24'27"W, A DISTANCE OF 656.12 FEET; THENCE BEARING S89 degrees 47'16"E, A DISTANCE OF 688.94 FEET TO THE

SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 27 SOUTH, RANGE 1 WEST; THENCE BEARING N01 degrees 24'27"E, A DISTANCE OF 1315.92 FEET, TO THE POINT OF BEGINNING. SAID TRACT CONTAINING 15.4 ACRES MORE OR LESS. Generally located South of 29th Street North and west of Maize Road.

BACKGROUND: The applicant is requesting to create a 13-parcel Community Plan containing approximately 59 acres. The property is located on the south side of 21st Street North between Greenwich Road and K-96. Parcel 12 (29 acres) is the main parcel. Eight small parcels are located along 21st Street North; three parcels are located along Greenwich. These small parcels average 1.3 acres in size. Parcel 13 (13 acres) is located along K-96 south of Parcel 12. The land at the extreme southeast corner of the intersection of Greenwich and 21st Street North is a 1.3-acre exception tract not included in the CUP.

The applicant has requested "LC" Limited Commercial zoning for all parcels. Requested uses would be use permitted by-right in the LC, Limited Commercial district except for correctional placement residence, outdoor storage, pawnshops, taverns, night clubs, asphalt or concrete plants, sexually oriented businesses and adult entertainment; service stations, convenience stores with gas islands, and vehicle service or repair would be limited to a combined maximum of three such uses and restricted to placement within Parcels 1-11; and restaurants with drive-in windows would be prohibited within 200 feet of residential zoning unless separated by an arterial street. Vehicle storage yards and general vehicle repair would be prohibited by the CUP and by the LC zoning.

All freestanding signs are to be monument type signs spaced a minimum of 150 feet apart. Two signs 45 feet in height with 325 square feet in maximum sign face are requested along K-96. Signs 30 feet in height with 300 square feet of maximum sign face are requested for the three major entrances on 21st and the main entrance on Greenwich. The remaining signs would be 20 feet in height with 200 square feet maximum sign face. Total signage would be limited to 0.8 times lineal frontage. Wall signs would be prohibited on the back of any façade facing residential zoning. Window signage is limited to 25 percent of the window area. Billboards and portable signs would be prohibited.

Compatibility is provided for architecture, landscaping, parking lot lighting and signage. Maximum building coverage and gross floor area is approximately 20 percent for Parcels 1-11. Coverage is 30 percent for Parcels 12 and 13, and gross floor area is 35 percent. Requested building height is 35 feet for Parcels 1-12, and 55 feet for Parcel 13. Setbacks are 35 feet along the streets and exterior property boundaries. Masonry screening walls would be required on exterior property lines per Unified Zoning Code unless parcels are developed with residential use. Cross-lot circulation and a pedestrian circulation plan are required for all parcels within the CUP.

The site is currently vacant but is part of the developing commercial node at 21st and Greenwich. It is bordered by K-96 on the east, a cemetery zoned "SF-5" Single-family Residential, and a bank, and vacant commercial property zoned "LC" Limited Commercial on the north. The property to the west, DP-274 Oak Creek and DP-266 The Woodlands is approved for a mixed-use development split fairly evenly between commercial (53 acres), office (41 acres) and residential (40 acres). The property to the south is a large residential estate, however, a request for rezoning to "LC" and a CUP (DP-277 Bruce Brown Property CUP) was recommended for approval by MAPC on August 29, 2004. More commercial development is occurring between 21st Street North and K-96, including a SuperTarget on the northwest corner of the 21st/Greenwich intersection. East of K-96, a bank is being constructed along 21st in DP-256, The Collective CUP, and large medical facility is being constructed on property zoned "GO" to the south of The Collective.

CASE HISTORY: Most of the property is platted as Eastside Community Church Addition, recorded October 29, 1998. The eastern part is unplatted. The property is subject to a protective overlay, P-O #28 (SCZ-0755 approved December 10, 1997). The CUP would replace the P-O provisions.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"; "SF-5"	Cemetery, bank, vacant
SOUTH: "SF-5"; "SF-20"	Residential estate
EAST: "LC"; "GO"	Bank and medical office under construction, vacant
WEST: "SF-20"	Vacant

PUBLIC SERVICES: 2002 traffic counts for 21st Street North were 4,241 cars per day. The 2030 projection for 21st Street North was 22,000 vehicles per day. These projections do not account for proposed and likely new developments being discussed in this vicinity, which would likely have increased the projections for traffic volumes significantly.

A traffic study for the 21st/Greenwich corridor was recently completed to identify improvements needed to accommodate increased traffic in the corridor, but the projected volumes for this tract used in the traffic study were significantly less than for uses proposed by this CUP (and the one filed for the abutting property to the north and east). The projections were based on 15 acres of commercial, 80 acres of office and 40 acres of residential. DP-279 requests 59 acres of commercial, and the application pending for the abutting property requests 68 acres of commercial. If developed in this manner, using the average peak volumes in/out for commercial use used in the traffic study, the trips in would be a five-fold increase and the peak trips out would double. (Note: the apparent discrepancy is because office use, which was 80 acres in the original study, have ten times the trips out as trips in during the peak hour, indicating a larger spread in arrival times to office uses but more uniformity in departure times.)

Currently, Greenwich is improved as a two-lane county arterial across the frontage of this proposed development. Six openings (three right-in/right-out only) on 21st and two openings (one right-in/right-out only) on Greenwich are requested. The access points generally conform to the access management policies for urban standards and align with the property to the west of Greenwich. 21st Street North is a 4/5 lane arterial with continuous center left-turn lane from K-96 to Greenwich.

Improvements are proposed for Greenwich to be constructed in 2005 as a 4/5 lane arterial road. Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended 1/02" of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "commercial", "institutional", and "low density

residential". The project is in conformance with this recommendation except for Parcels 1 and 2 ("institutional") and Parcel 13 ("low-density residential").

Commercial Objective III.B encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed CUP is in general conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines for minimizing detrimental impacts and planned development.

RECOMMENDATION: The proposed CUP is similar in intensity to development approved or underway, although the land immediately east of Parcel 13 and K-96 is being developed for office use rather than retail. It is generally in conformance with the Comprehensive Plan except that it increases the depth of commercial use allowed along K-96 and replaces the tract shown as "institutional" with "commercial". Originally, staff had requested a street connection between the Crosspointe and the proposed development to the south. However, the proposed site development pattern for Crosspointe, drainage requirements and limitations on access locations on 21st Street North constrained the possibility of this alignment. Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

C. APPROVE the zone change (ZON2004-44) subject to platting of the entire property within one year;

D. APPROVE the Community Unit Plan (DP-274), subject to the following conditions:

1. The applicant shall guarantee for a continuous accel/decel lane at major entrances on 21st Street North and Greenwich Road and southbound center left-turn lane at major openings on Greenwich Road at time of platting.
2. The applicant shall guarantee proportionate share of traffic signalization for major openings at the time of platting.
3. Modify P-O #28 to eliminate those portions governed by the CUP.
4. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
5. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
6. All property included within this CUP and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
7. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-279) includes special conditions for development on this property.
8. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is currently vacant but is part of the developing commercial node at 21st and Greenwich. It is bordered by K-96 on the east, a cemetery zoned "SF-5" Single-family Residential, and a bank, and vacant commercial property zoned "LC" Limited Commercial on the north. The property to the west, DP-274 Oak Creek and DP-266 The Woodlands is approved for a mixed-use development split fairly evenly between commercial (53 acres), office (41 acres) and residential (40 acres). The property to the south is a large residential estate, however, a request for rezoning to "LC" and a CUP (DP-277 Bruce Brown Property CUP) was recommended for approval by MAPC on August 29, 2004. More commercial development is occurring between 21st Street North and K-96, including a SuperTarget on the northwest corner of the 21st/Greenwich intersection. East of K-96, a bank is being constructed along 21st in DP-256, The Collective CUP, and large medical facility is being constructed on property zoned "GO" to the south of The Collective.
2. The suitability of the subject property for the uses to which it has been restricted: The area is rapidly developing with commercial uses. The suitability for residential use is reduced by the commercial development underway in all directions. Originally two tracts were intended as church sites, but the churches determined the property was suited for higher intensity retail/commercial use and have sold the tracts.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The cemetery is potentially impacted by the development, and the CUP has mitigated the intensity by some of the use restrictions in General Provision #3.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "commercial", "institutional", and "low density residential". The project is in conformance with this recommendation except for Parcels 1 and 2 ("institutional") and Parcel 13 ("low-density residential"). **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

The proposed CUP is in general conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines for minimizing detrimental impacts and planned development.

5. **Impact of the proposed development on community facilities:** The increased traffic from higher intensity of use than projected by the traffic study can be addressed by accel/decel lanes, left-turn lanes and possible signalization.

MOTION: To defer to 9-23-04 MAPC meeting.

MCKAY moved, **MITCHELL** seconded the motion, and it carried (11-0).

14. **Case No.: CUP2004-35 DP50 Amendment #5** – Infinity Financial – Wichita c/o Rod M. Stewart (owner); B.W.I. Inc. c/o Charles F. Badeen (applicant); Gene Razook (agent) Request Amendment of the Carriage House Plaza 2nd Addition Community Unit Plan to permit a night club on property described as;

That part of Lot 5, Block 2, Carriage House Plaza Second Addition, Wichita, Sedgwick County, Kansas, described as beginning at a point of the North line of said Lot 5, said point being 845 feet East of the West line of the Northwest Quarter of said Section 28, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence S 00 degrees W, parallel with the West line of the Northwest Quarter of said Section 28, 556.51 feet to the South line of said Lot 5; thence S 89 degrees 27' W along the South line of said Lot 5, 185.05 feet to a point 659.95 feet East of the West line of the Northwest Quarter of said Section 28; thence N 00 degrees 34'05" W, 559.37 feet to the North line of said Lot 5; thence N 89 degrees 23' 30" E, along the North line of said Lot 5, 185.50 feet to the intersection of the Southerly line of Topaz Lane as platted in said Addition and being a point on a curve, through a central angle of 02 degrees 07'20" (having a chord bearing S 59 degrees 19'37" E, 5.93 feet), a distance of 5.93 feet to the point of beginning. Generally located East of Tyler and north of McCormick.

BACKGROUND: The applicant is seeking approval to allow an existing business (Pistachio's) located at 600 S. Tyler, Suite 226 that currently holds dance hall and drinking establishment-restaurant (DE-R) licenses to also obtain a cabaret license. A cabaret license permits an establishment to offer live entertainment, and the applicant proposes to offer live entertainment, primarily in the form of a disk jockey that interacts with the audience. Based upon an interpretation provided by the Superintendent of Central Inspection, businesses holding all three licenses – drinking establishment-restaurant, cabaret and dance hall - are to be treated per the *Unified Zoning Code* as a "night club in the city."

A "night club in the city" is defined by the *Unified Zoning Code* as an establishment that provides entertainment, which may include the provision of dancing by employees or patrons, and where cereal malt beverage or alcoholic liquor are offered to the public or its members, and which may or may not serve food. "Night club in the city" is a use permitted by right in the "LC" district except when it is located within 200 feet of a church, place of worship, public park, school or residential zoning district. A Conditional Use (or an amendment to a Community Unit Plan) is required if a night club is located within 200 feet of the aforementioned uses or zoning districts. Since subject property is located within 200 feet of a residential zoning district, approval of the proposed amendment of the CUP is required to allow a night club on the subject property.

The existing business is part of an existing retail strip center that is located north of Kellogg and east of Tyler, and is located on Parcel 2 of DP-50 Carriage House CUP. The subject property is zoned "LC" Limited Commercial and "GC" General Commercial, subject to the conditions contained in DP-50, including the development standards for Parcel 2. Surrounding properties are primarily zoned for and developed with commercial uses along the Kellogg corridor. Residential properties are located north of the subject property. The most immediately adjacent residential use is multi-family.

CASE HISTORY: DP-50 Carriage House CUP was approved in 1973. Numerous administrative adjustments and amendments to DP-50 have been approved since that time.

ADJACENT ZONING AND LAND USE:

NORTH: "MF-29"	Multi-family residential uses
SOUTH: "LC" & "GC"	Various commercial uses
EAST: "LC" & "GC"	Home Depot
WEST: "SF-5"	Church

PUBLIC SERVICES: At this location Tyler is a five-lane arterial carrying approximately 17,000 average daily trips. All municipal services are available, and no negative impacts on public services are anticipated to be caused by the proposed amendment.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. As recommended for approval, the request conforms with the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the amendment to Parcel 2 be APPROVED subject to the following condition:

1. A night club shall be permitted on Parcel 2, but shall be limited to a total of 6,100 square feet of gross floor area.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized primarily by commercial uses along the Kellogg corridor with residential uses located to the north. Since the subject property is most immediately adjacent to multi-family residential uses and is located within a major commercial development area, the request is consistent with the zoning, uses, and character of the neighborhood.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code, the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance, and the additional recommended provisions of the CUP should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. As recommended for approval, the request conforms with the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.
4. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

SCOTT KNEBEL Planning staff, presented the staff report.

MCKAY Can we put any restrictions on this and not just leave this open-ended?

KNEBEL You do have the right to put reasonable conditions on it. The restriction that staff is recommending is limiting the floor area to 6,100 square feet of this shopping center.

MCKAY I'm talking about use.

KNEBEL You could put reasonable conditions regarding types of use, hours of operations, numbers of seats, etc.

GAROFALO I was contacted concerning this item, but it has no bearing on any decision that I make.

GENE RAZOOK, I'm agent for applicant. This was put in and is an operating facility at this time, but all the permits were issued except we found out something had changed where they couldn't obtain the cabaret license to have the disk jockey that interacts with the audience.

When the disk jockey interacts with audience that makes it live entertainment, when the disk jockey talks to the public or vice versa. It is a borderline deal, and that is all my applicant is asking, so they can have the disk jockey to communicate with the people in the club and vice versa.

BARFIELD This location has been the scene of several disturbances in the past, and one of them was fatal just here in recent days. How does your client plan to address these disturbances?

RAZOOK I talked to him. I don't think there has been anything fatal. There was a gang in the parking lot after the business was closed, which shouldn't have any bearing on this case.

BARFIELD What kind of security arrangements do you have?

RAZOOK I think Mr. Rod Stewart is the agent for the property owner who handles that, and they do have security there at night.

ROD STEWART, I am Rod M. Stewart, realtor. I am the property manager for Kellogg Crossing Shopping Center. As far as security arrangements for this particular shopping center, we have private security that patrols the property three times every evening from 10:00 p.m. to 3:00 a.m. They are instructed to not allow anyone to congregate in the parking lot. The property has been posted so cars are not allowed to be left there over night, and they can be towed. On the night in question I was out of the state and our private security did show up and there was already the Wichita Police Department there, and I am told it took 13 minutes for the police to show up after they were called. I do not know that there has been a fatality there.

BARFIELD Does Pistachio's have any uniformed security inside the building?

STEWART I can't answer that, I don't know.

MOTION: To approve, subject to staff comments and citing the findings in their report and the additional condition of limiting live entertainment to a disk jockey that can interact with the public and vice versa.

HENTZEN moved, **MITCHELL** seconded the motion.

MCKAY I think that since the applicant has said all they want is a disk jockey there, we ought to limit it to that.

HENTZEN It would be a requirement that they couldn't have other type of entertainment?

MCKAY Their request was so that they could have a disk jockey that could talk with the public and vice versa, and I am just saying let's make that part of the motion.

MARNELL I am going to oppose the motion because of the change. I don't think it is our business whether it turns out to be a live band or a disk jockey. Either one is live entertainment.

MITCHELL I withdraw my second.

MOTION: To approve, subject to staff comments and citing the findings in their report and the additional condition of limiting live entertainment to a disk jockey that can interact with the public and vice versa.

HENTZEN moved, GAROFALO seconded the motion.

HENTZEN I want to tell you, I had no problem with passing the request without that limitation.

MCKAY All you say is that you don't accept the amendment to your motion.

HENTZEN I withdraw my motion.

GAROFALO I withdraw my second.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MARNELL moved, MITCHELL seconded the motion, and it carried (9-2). (GAROFALO, BARFIELD, opposed)

15. **Case No.: CON2004-25** – Johnnie Bell (owner/applicant) Request Conditional Use to permit outdoor vehicle sales on property zoned "LI" Limited Industrial within the Delano Overlay District on property described as;

Res B and Lot 44 Kelsh's Resurvey. Generally located At the southwest corner of Douglas and Handley (825 W. Douglas).

BACKGROUND: The applicant is requesting a Conditional Use to allow outdoor vehicle and equipment sales on a 0.16-acre platted tract located at the southeast corner of West Douglas and Handley. The subject property is zoned "LI" Limited Industrial with Delano Neighborhood Overlay District Zoning, this overlay district requires a conditional use for outdoor vehicle sales. The application area is an entirely paved asphalt lot, with a small (400 square foot) office building at the rear of the lot. The north, south, and west sides of the lot have an existing 3-inch pipe rail at 18 inches above pavement. The submitted site plan demonstrates no changes to the existing conditions.

The site was used for outdoor vehicle sales by right until some time in 2002. Since that time, with the adoption of the Delano Neighborhood Revitalization Plan and the Delano Neighborhood Overlay Zoning District, outdoor vehicle and equipment sales became a conditional use within the Overlay District. The Office of Central Inspections (OCI) determined that the vehicle sales use had ceased for over 12 months on the application area site. Therefore, in accordance with the Unified Zoning Code (UZZ), non-conforming use rights do not exist at this site for vehicle sales. The applicant disputes OCI's determination on this matter.

The application area sits within Delano District improvements along West Douglas, running from the Arkansas River to Seneca Avenue. Improvements in the area include a traffic circle, clock tower, diagonal on-street parking, street trees, decorative light fixtures, and landscaping planters. One such landscaping planter sits on the Douglas sidewalk, immediately north of the application area.

The character of the neighborhood is that of local serving retail, restaurant, and some office uses along the Douglas streetscape, with primarily single-family residential uses south of the Douglas commercial row. Properties north of the application area are LC zoned commercial row buildings with primarily retail uses. Southwest of the site, across the alley, is a small GC zoned lot with a small office building. The remainder of the site's south boundary sits across the alley from GC zoned single-family residential uses. East of the application area are LI zoned retail uses in commercial row buildings. West of the application area, across Handley, is an LC zoned office use, further west are retail and restaurant uses.

The other nearest vehicle sales lot on Douglas sits west of Exposition Street, approximately 1,450 feet west of the application area, and two blocks west of Seneca (the west boundary of the Delano District street improvements). This other vehicle sales lot is within the Delano Overlay District, but not within the Delano District improvements.

CASE HISTORY: The subject property was platted as Reserve B and Lot 44 of Kelsh's Re-survey.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC"	Retail
SOUTH:	"GC"	Office, single-family residential
EAST:	"LI"	Retail
WEST:	"LC"	Office, retail

PUBLIC SERVICES: The subject property has access to Handley via the alley south of the property, adjacent to single family residential uses. West Douglas was recently reduced to two traffic lanes with on-street diagonal parking, and numerous pedestrian amenities. The traffic count as of May 2003 was 9,022 vehicles per day. This volume may have reduced due to Douglas' reduction to two lanes, and improvements such as the traffic circle. The proposed conditional use would have approximately 8,000 square

feet of vehicle display and storage, which would generate additional traffic on this portion of Douglas. Municipal water and sewer services are available at the subject property.

CONFORMANCE TO PLANS/POLICIES: The Commercial Locational Guidelines of the Comprehensive Plan recommend that auto sales lots and other types of infrequent purchases or non-neighborhood serving commercial uses be guided to areas containing similar uses, and away from neighborhood commercial areas. The subject property does not meet these Commercial Locational Guidelines of the Comprehensive Plan. The Wichita Residential Area Enhancement Strategy of the Comprehensive Plan identifies the subject property as being located within a Revitalization Area. The Comprehensive Plan indicates that Revitalization Areas are experiencing decline and need stabilization to increase the neighborhood's attractiveness for private investment in residential properties. Intensifying commercial uses in the area, as proposed by the applicant, is contrary to the neighborhood revitalization strategies in the Comprehensive Plan.

The adopted Delano Neighborhood Revitalization Plan seeks to make the Delano District a quality destination with unique character. The plan intends to discourage commercial uses, which are out of character with the district; and intends to discourage intense commercial activities where they would have a negative effect on residential areas.

The UZC Delano Neighborhood Overlay Zoning District makes outdoor vehicle sales a conditional use within the district. The UZC design guidelines for the Delano Overlay Zoning District require conformance to the landscape code, screening from adjacent residential properties, and screening of parking areas with low walls. Development within the Delano District requires a design review by the Delano Design Review Committee to ensure compliance with the neighborhood's design guidelines. The design review provisions applicable within the Delano Overlay District are intended to recognize the special architectural character and proposed land-use mix of the Delano neighborhood, and to protect the private property values and public investments in and near the Delano Neighborhood.

Staff received one letter from a business northwest of the application area, across Douglas, in support of the application. Staff received no other calls or letters on this application.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be **DENIED**.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the neighborhood is that of retail, restaurant, and some office uses along the recently improved Douglas streetscape, with primarily single family residential uses south of the Douglas commercial row. The zoning of the neighborhood is a mixture of LC, GC, LI, and low-density residential zoning. Vehicle sales is not an established use in this redeveloped area, and vehicle sales uses most commonly locate in areas where commercial properties are more regional serving. The proposed vehicle sales lot is not consistent with the overlay zoning, uses, or character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LI" Limited Industrial, and lies within the Delano Overlay Zoning District. The property is suitable for the commercial uses to which it has been restricted, such as parking for the buildings on the same block, or redeveloped for a commercial use. The traffic slowing amenities on Douglas, and its reduction to two lanes, does not make this immediate area appropriate for a regional auto related use. The subject property should remain zoned for local serving commercial businesses, which are in character with this redeveloped district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Vehicle sales would represent an intensification of the commercial uses along the redeveloped Douglas corridor. Allowing one commercial use to intensify in an area typically leads to nearby properties also requesting approval for more intense commercial uses. Over time, the intensification of commercial uses in a destination and locally serving commercial area tends to have detrimental impacts on surrounding residential properties. Commercial intensification leads to an increase in commercial traffic from outside the neighborhood, a decrease in neighborhood identity, and a general decline in the desirability of the nearby residential neighborhood.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Commercial Locational Guidelines of the Comprehensive Plan recommend that auto sales lots and other types of infrequent purchases or non-neighborhood serving commercial uses be guided to areas containing similar uses, and away from neighborhood commercial areas. The subject property does not meet these Commercial Locational Guidelines of the Comprehensive Plan. The Wichita Residential Area Enhancement Strategy of the Comprehensive Plan identifies the subject property as being located within a Revitalization Area. The Comprehensive Plan indicates that Revitalization Areas are experiencing decline and need stabilization to increase the neighborhood's attractiveness for private investment in residential properties. Intensifying commercial uses in the area, as proposed by the applicant, is contrary to the neighborhood revitalization strategies in the Comprehensive Plan. The adopted Delano Neighborhood Revitalization Plan seeks to make the Delano District a quality destination with unique character. The plan intends to discourage commercial uses, which are out of character with the district; and intends to discourage intense commercial activities where they would have a negative effect on residential areas.
 1. Impact of the proposed development on Community Facilities: The proposed vehicle sales use would generate vehicular traffic. The reduction of Douglas to two lanes with on-street diagonal parking, a traffic roundabout, and other pedestrian amenities do not support the proposed auto-based intense commercial use.

If after closing the public hearing the MAPC finds the request appropriate, the MAPC motion to approve will need to include findings of fact regarding the Unified Zone Code Review Criteria that support approval and planning staff recommends that approval be subject to the following conditions:

1. All requirements of Section III.D.6.x. (attached) of the Unified Zoning Code shall be met.
2. Parking spaces for employees and customers shall be marked and designated for employees and customers and shall not be used for display of vehicles for sale, unless the vehicle is driven by an employee. The vehicle sales lot shall not be used in conjunction with any use not directly related to such a business unless sufficient parking spaces for such a business are provided per a site plan approved by the Planning Director.
3. The applicant shall submit a landscape plan for approval by the Planning Director and the Delano Design Review Committee that meets all landscaped street yard and landscape buffer requirements of the Landscape Ordinance.
4. The applicant shall submit a revised site plan for approval by the Planning Director that meets all requirements of Article III.C.8, Delano Neighborhood Overlay District of the Unified Zoning Code.
5. The site shall be developed in general conformance with the approved site plan and landscape plan. All improvements shown on the approved site plan and landscape plan shall be completed before the vehicle sales lot becomes operational.
6. The applicant shall obtain all permits necessary to make the required site and landscaping improvements, and all improvements shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
7. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
8. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

JESS MCNEELY Planning staff presented staff report.

BARFIELD Has this application been reviewed by the DAB?

MCNEELY No.

BARFIELD This was the site of a used car lot prior to the changes of the Delano District?

MCNEELY Yes, this was a used car lot as the property is zoned "LI" Limited Industrial. This was a used car lot by right when it existed. Office of Central Inspection determined that this site ceased to operate as a used car lot for greater than 12 months. In the interim, the Overlay Zoning was approved requiring a Conditional Use for a used car lot at this location. This forces the applicant to request a Conditional Use for vehicle sales in order to achieve his objective.

BARFIELD At the time that it was a vehicle sales lot, Douglas at that area was a four-lane street, correct?

MCNEELY Yes, at that time.

SHERMAN It was a car lot, then out of business, and now we are asking for a Conditional Use and then you said there is a used car lot located to the west?

MCNEELY Yes, there is one to the west.

SHERMAN So, it is vacant lot with no use whatsoever?

MCNEELY It is a paved lot and striped and it does have an existing pipe fence around it as many vehicle sales lots do.

MARNELL Were you here when we held the hearings for the Delano Overlay?

MCNEELY I was present as the plan was adopted for Delano, I was not present when the zoning overlay was approved.

GIBBS Has this been brought before the Delano review committee?

MCNEELY The Delano Business Association and the Delano Neighborhood Association were on the mailing list for this case and received notice, but we have had no contact from either of those organizations.

MCKAY The ownership has not changed since the adoption of the Delano Overlay?

MCNEELY No, the ownership has been consistent.

JOHNSON I am curious about the area just east of this on Douglas, it was the old original Nichols Honda Building that I think is vacant now. Let's say if they started that back up would they have to come back through this deal since it is now a two-lane street versus a four-lane street or is it retail sale?

MCNEELY No, indoor retail uses would not have any issues under the Delano Zoning Overlay.

HENTZEN I was active in that Delano Neighborhood Plan and dealt with the big hitters and I remember that the City staff assured the people that owned property in that area could retain the zoning that they had if they wanted to. That is what has happened it is the same owner with the same zoning but now we are going to trap him because we had this Overlay and that is what is happening now. He can do what he wants to do with his zoning but we are going to put an impediment in front of him based on the Overlay. I think if we don't let him use his land I think we have mislead those owners.

JOHNNIE BELL, 801 W. DOUGLAS, WICHITA KS 67213 About a month ago I came up and talked to Jess and he gave me the impression that if I made a plot plan which I did and sent \$525.00 to the City to get application that I could probably get Conditional Zoning. I spent \$470.00 to the Title Company to list the people who own property within 200 feet of my lot I would probably get Conditional Zoning. I called everybody within the 200 feet and I had encouragement that there would be no objections.

I built this building and put up a steel rail completely around the lot as the specifications of my first tenant Robinson Les-Line Buick. They used it as a used car outlet. That was back in 1980. My last licensed tenant was Vickery Khoury who moved out in January 2002 and when he moved out one of the reason that he moved out was because the bridge was being built and they different have enough volume there. So I put up a sign for lease and contacted real estate people, several real estate people, and put an add in the paper. Then the word that Delano was going to be done and particularly closed for the redo. Each week 2-3 people would call me about renting the lot and we would discuss the Delano Plan, I continued cutting the lawn and keeping the area clean and hired Cornejo to blacktop the lot, I painted the rail around the building. I then rented to Dave Weber and he paid the first and last months in advance but then after he thought about it he thought the Delano traffic was going to slow down so much he thought he better not take it on. I then rented it to Christie Scott and she paid the first and last months in advance and she had the same reason.

I paid insurance and taxes for the lot through 2003. I was talking to Bobbie Lubbers from Lubbers Chevrolet and he was going to rent the lot and he was concerned about the slowing down of the traffic. There were about six other real genuine contacts that I had that I contacted and they didn't go because of that. On my logbook I logged 61 appointments to see and talk about the car lot in 2002, 2003, and 2004 and this does not include the phone calls that I made when I was sitting at my desk but no appointment was made.

As the City zoning said that I abandoned the lot. I certainly did not do that. Because of the attitude and the slow down of traffic and the way it was talked about in the paper. I have a three-year lease with the tenant that I have now and the reason I am up here is because they wouldn't give him a license because they said I have to get it rezoned. I think this is unfair, and unjust, and a restrain of trade.

HENTZEN Do you own the buildings to the east of that lot?

BELL Yes, I do.

HENTZEN You own all of them?

BELL Yes.

MANRELL At the time the Delano Plan went out letters went out to property owners in the area describing down zoning in a lot of cases assuring owners and particularly people who had commercial property that if they chose not to have their property downgraded that they would have complete and full use of their property and would not have to have it downgraded. Did you receive one of those letters?

BELL I did and I came down and reported it and they said I would have no changes.

LORI BELL, 801 W. DOUGLAS, WICHITA KS 67213 Right besides our building our car lot used to be Shrives Market, we owned the Bell Floor Company the building next to the car lot was falling down and that is the oldest business building in the City. Johnnie said, "I will just tear this down because it is falling down because of the rains." I told him no and we went to the City and they said why don't you make the whole block historical. So now we have down that and the Federal, State, and City have declared that a Federal Historical Block and it cost a lot of money. We have a wonderful renter now and we bring in a lot of people and he will hire 4-5 sales people and a bookkeeper.

BARFIELD The car lots that are in question to the west of this location is that along the four-lane stretch of Douglas?

MCNEELY Yes, that is along the four-lane stretch.

MARNELL This is the stuff that I was concerned with at the time that the Delano Plan went through and spoke my objections to it and I was assured that anybody that had commercial property would be protected that this wouldn't be a problem. They couldn't let these notices pass and we extended the deadline to protect their property, we have someone here today that did protect their property, kept it commercial and through some sort of loop now they are going to take the right to use that property. I am not going to support staff on this.

MITCHELL Would it be possible if part of the application fee be refunded?

MOTION: To approve subject to Condition 1 and Condition 2, on page 5, of the staff report and subject to Condition 7 and Condition 8 on page 6 of the staff report.

MCKAY moved, **MARNELL** seconded the motion.

HENTZEN All we are doing is approving the Conditional Use and not changing the zoning.

SUBSTITUTE MOTION:

BARFIELD MOVED TO DENY

MOTION DIES LACK OF SECOND.

VOTE ON ORIGINAL MOTION: Carried (10-1) **BARFIELD** opposed.

16a. Case No.: CUP2004-38 DP192 Amendment #2 (Associated with ZON2004-43) – Via Christi Property Services, Inc. c/o R. Allan Allford (owner/applicant); Baughman Company, P.A., c/o Russ Ewy (agent) Request Amendment to the Tallgrass East Community Unit Plan on property described as;

and

16b. Case No.: ZON2004-43 (Associated with CUP2004-38 DP192 Amendment #2) - Via Christi Property Services, Inc. c/o R. Allan Allford (owner/applicant); Baughman Company, P.A., c/o Russ Ewy (agent) Request Zone change from "SF-5" Single-family Residential to "GO" General Office on property described as;

Reserve D, Kansas Surgery and Recovery Center Addition to Wichita, Sedgwick County, Kansas. Generally located East of Webb Road and south of K-96 Highway.

BACKGROUND: The applicant requests an Amendment to Parcel 3 of DP-192 Tall Grass East Business Park CUP and a zone change for the subject property from "SF-5" Single Family to "GO" General Office. The subject property is 9.8 acre platted reserve that is located south of K-96 and east of Webb Road and is undeveloped.

The surrounding area is characterized primarily by commercial and industrial uses along the K-96 corridor and residential uses in the Tallgrass neighborhood. The properties to the west are zoned "B" Multi-Family, "LC" Limited Commercial, and "GC" General Commercial and are developing with various medical-related uses. The property to the north is zoned "SF-5" Single Family and is part of Jabara Airport. The properties to the east are zoned "LI" Limited Industrial and are developing with various industrial uses. The properties to the south are zoned "SF-5" Single Family and are developed with single-family residences.

Parcel 3 is zoned "SF-5" Single Family, and the CUP permits drainage, landscaping, bike path, and pedestrian improvements. The applicant proposes to rezone Parcel 3 to "GO" General Office and to permit the following additional uses: office, medical service, and parking. The applicant proposes up to 64,000 square feet of office/medical service development in buildings limited to 35 feet in height and set back at least 140 feet from the residential properties to the south.

CASE HISTORY: DP-192 Tall Grass East Business Park CUP was approved in 1989. Numerous administrative adjustments and an amendment have been approved since that time.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"	Jabara Airport
SOUTH:	"SF-5"	Single-family residences
EAST:	"LI"	Various industrial uses
WEST:	"B", "LC" & "GC"	Various medical-related uses

PUBLIC SERVICES: The subject property has access to Webb Road via Shannon Woods, a private street. Current traffic volumes on Webb Road are approximately 12,500 vehicles per day. The 2030 Transportation Plan recommends the Webb Road remain a four-lane arterial with turn bays. The existing roadway system should be sufficient to handle the additional traffic to be generated by the proposed development. All other municipal services are available to be extended to the subject property.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. As recommended for approval, the request conforms with the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the rezoning to "GO" General Office and the amendment to Parcel 3 be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized primarily by commercial and industrial uses along the K-96 corridor and residential uses in the Tallgrass neighborhood. Since the subject property is separated from existing residential uses by electrical transmission lines and is located at the edge of a major commercial development area, the request is consistent with the zoning, uses, and character of the neighborhood.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code, the landscaped street yard, parking lot screening, and buffer

requirements of the Landscape Ordinance, and the additional recommended provisions of the CUP should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. As recommended for approval, the request conforms with the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.
4. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, **MITCHELL** seconded the motion, and it carried (11-0).

❖ **PLANNING COMMISSION ITEMS**
17. **2004 Pathways Report, presenting Planner, Scott Wadle.**

SCOTT WADLE Planning staff presented report.

BARFIELD How do you explain the high number of cycle use on these paths?

WADLE I can't explain why we are seeing higher numbers than other communities have experienced.

HENTZEN Are all the trails owned by the City and County? I don't know how wide those trails are but in the wintertime you get pretty slick ice, is the City or County liable for that?

WADLE That would be a legal question.

BARFIELD There were a group before the BOCC just yesterday that were trying to develop a trail out to the west there and they were not able to put up the liability insurance, maintain it in a proper manner so therefore they were denied the request. So I would say whoever owns that property the City or the County they have to have the liability insurance and they would be liable.

MITCHELL Do you have any idea how many of these trails are immediately adjacent to residential subdivisions on land that wasn't already owned or some kind of easement by a governing body when a trail was put in?

WADLE You want to know which trails were put in adjacent to residential subdivisions that were already existing?

MITCHELL No, new residential subdivisions where the requirement was for the subdividor to put in the trial.

WADLE I am not sure.

MITCHELL There has been some discussion about these trails being used for commuting and in reading the report it appears very spotty on your being able to identify commuters.

WADLE That is the difficulty with it, observing a commuter you can typically do that by if they are carrying a backpack on there but there is no sure way unless you are stopping and conducting a survey of the cyclist, asking them questions there is no definite way to get answers but we can do guesses but I didn't think the numbers would be represent very much if we did it by eyeballing.

MITCHELL The numbers are low and questionable?

WADLE No, the numbers would have been questionable if we had guessed how many commuters there were.

MITCHELL You did estimate that certain users you saw were commuter without asking?

WADLE And that was simply given by the time and the appearance. I don't want to give anyone the idea that there are a lot of commuters or that there are a low number of commuters I just want to give the idea that there are commuters using the trail for that purpose.

GIBB Are all 8 of the trails reported hard surfaced?

WADLE Yes, they are.

BARFIELD I would like to point out that development new biking and jogging trails was of some importance to 79.5% of households surveyed.

GAROFALO Is there in the works or is this study going to be done annual?

WADLE It is hoped annually or bi-annually that we will be able to collect statistics on trail use.

GAROFALO Will you pick other locations?

WADLE I think that we would try to be somewhat consistent with our locations because that would give us the ability to compare numbers between trail uses.

GAROFALO I would suggest that the Arkansas River way south are used even more than the areas that your checked, I think it is sad. Say from John Mack Bridge on south or Pawnee on south.

WARNER What triggered this report?

SCHLEGEL We had a summer intern a K-State student and this was something that we had no data on so we assigned her to go out and gather some data on bike path use.

HENTZEN These trails I think that KDOT people and the federal transportation people are most happy when somebody comes along and they want to spend money on bike trails.

18. DR2004-10 -- Subdivision Regulation Amendments – Discussion of Utility Easement,

The proposed amendment to the subdivision regulations contains staff's current policy regarding utility easements. It is merely a codification of that policy to help clarify the existing regulations and spell out exactly when additional utility easements are needed.

20 feet is needed for rear lot lines and 10 feet for side lot lines. These dimensions have been in place since the subdivision regulations were adopted in 1968.

When we receive an application for a plat, lot split or vacation cases with an existing easement that does not conform with these standards, then we request the dedication of additional easement as a condition of that approval. This amendment adds language to reflect this procedure.

Public Works advocates these additional easements in order to perform necessary maintenance on existing or proposed utility lines. We have not had objections by property owners to these requests.

NEIL STRAHL Planning staff presented report.

MCKAY Neil, you made the comment that these are the regulations that we adopted in 1968, I think we have adopted new Subdivision Regulations since 1968?

STRAHL The Public Utility Easements have not changed.

MCKAY You are saying when we worked S/D regulations and all this we did not address that issue?

STRAHL We did not make any revisions to the 20-foot and the 10 feet.

MARNELL Neil, is this a mistake on here the way that this is written? It says, "Public utility easements shall be provided as follows, and it used to say "as where necessary" and that is struck out then it says "The 20-foot and the 10 foot on side." Does that mean every lot in every subdivision is going to have a side lot utility easement on each side of the house as well as one along the back?

STRAHL Well, where needed.

MARNELL "Where necessary" you struck out.

STRAHL The reason that was struck out is because there was confusion about what that actually meant. Did that mean in accordance with the 10 or 20 feet or did that mean when requested by staff.

MARNELL I think this needs some reworking because to me just reading this, it looks like if someone brings a plat in and in order for it to comply properly they have to put a 20-foot back lot utility easement, 10 foot on each side everywhere and up to 30 feet where there is a tree line or something and on all side lots a 10 foot one.

STRAHL It says, "Where plat, lot split, or vacation, contains any existing utility easements less then the minimum widths required." I mean that spells things out that we are just looking at existing utility easements that are substandard and asking for an upgrade.

MITCHELL That is not what this says.

MARNELL But is this the easement standard, or is this only for lot splits?

STRAHL For lot splits, plats and vacation cases.

MARNELL My opinion is you need to do some rewording. Which lots would not have utility easements if you read or started reading this from the top? Which lots in the subdivision would not have side lots and rear lots, particularly side lots because virtually all of them end up with rear lots? Which ones wouldn't have side lots and why in order to be in compliance with the regulations?

SCHLEGEL Neil, wasn't the intent to require these easements for every plat?

MARNELL On every lot?

SCHLEGEL I thought that is what was intended.

STRAHL No, there are some exceptions where you don't need them along every side lot or along every rear lot line but really the intention was for the existing substandard utility easements with a case that we are working on - whether it be a plat, lot split, or vacation case.

SCHLEGEL What kind of exceptions are we talking about?

STRAHL If they are planning on running the lines along one side and not the other side then they won't need to plat utility easements on that particularly side.

MARNELL When you look at a large subdivision, you look at where the utilities end up, they use a very small number of sideline easements where they have to connect to the back line. I am baffled that we would try to put easements on all of the property where they are totally unnecessary. Then you end up having people like ourselves having to sit here and listen to people vacating easements.

MILLER What if we add, "where requested" at the end of that sentence?

MARNELL As in "where requested during the subdivision process" which is where I would have thought the sideline would come in anyway.

MITCHELL There wasn't anything wrong with "typically are".

MILLER Either way, I thought the whole reason that this came up was because there was an argument over what "where necessary" meant.

MITCHELL You have taken out "where necessary".

MILLER Somebody on this Commission is arguing what that means so that is why we took it out and I can see what you are saying so that is why I am suggesting "where requested" so that it is clear that it is a part of the Subdivision process as opposed to just an out and out requirement on every lot.

MARNELL Just change "where necessary" to "where requested"? That would work for me.

HENTZEN Requested by whom?

MILLER Otherwise you could say, "where required" by the Planning Commission. Typically what happens at Subdivision meeting many of you know the plat or the subdivider submits a plat and he makes his best guess of where he thinks utility easements are going to be needed and then during the course of the hearing we get the utility companies saying they need additional easements and they hand a drawing to Neil and then the plat gets amended to include those and that is how new ones are added. Occasionally the plat may put in extra utility easements that never get used and that are why you see the vacation requests that come around. But essentially staff is not interested in getting more of these than what we actually need and most of these additions are based on specific requests by specific utilities.

WARNER Normally doesn't this come up when we get a request for something like a lot split or whatever.

MILLER I am suggesting that if it is changed to "where requested" whether that is staff or anybody else and then Planning Commission as a whole can decide whether that request is valid or not.

MCKAY Read your changes Dale.

MILLER I was going to stick it at the end and strike "where necessary" and change to "public utility easements shall be provided as follows: Utility easements shall be centered on rear or side lot lines and shall be at least 20-feet wide along rear lot lines and 10-feet wide along side lot lines "where requested". So if it is not shown on the plat then it is not requested.

MITCHELL We don't always have plats. We have other actions by the Planning Commission where the additional easements have been opposed.

MILLER Then the next sentence is what takes care of that, the underlined portion addresses those situations.

MITCHELL Then you say "additional easements shall be dedicated", does that leave any authority to the Planning Commission to defer from that recommendation?

MILLER I believe as a Subdivision Committee and the Planning Commission you have the ability to waive those standards that you think are not appropriate on any given case.

STRAHL Utility easements are considered design standards so they would be allowed to be waived by the Planning Commission.

GAROFALO I would suggest a colon after follows.

MARNELL The "where required" seems to me to fix the problem of not putting them on every lot which would be way overkill.

SCHLEGEL Is it "where requested" or "where required"?

MILLER Either one would work. I suggested "where requested" but if "where required" is better for the Commission that is fine with me.

WARNER If you request something it is not necessary where if it is required you have to do it.

SCHLEGEL I have an alternative suggestion, the first sentence to read, "Public utility easements shall be provided wherever utilities are to be installed." Then go on with the rest of it as it stands. Because that is what you are after. You need a public utility easement wherever a utility is going to be installed. When they are installed these are the standards then for those easements.

MARNELL I don't think you want to do that. You could end up with some back lot easements that are the real connection lines throughout subdivision and if there is a link in there where it doesn't go through and for whatever reason if anyone redesigns or reworks their utility for whatever reason if you remove the easements that piece is there so the side lot would really be the excess because all of the rear lots - they need to be there because you don't have alleys anymore.

SCHLEGEL What I said is that wherever you are going to install a utility you have to provide for an easement and then here are the standards for the easements when you are required to.

MARNELL I don't think at the time that you run these plats through that all the utilities have finalized the actual physical lines that they will use. I don't know how you get to what you're saying because does that mean they automatically remove it if it wasn't physically put there?

SCHLEGEL But what they are going to have to do is at least when they are doing the plat they have some idea how they are going to provide utilities to those lots. They may not have the final design done yet but they have some idea. They need to then provide easements on the plat for the utilities and then any contingency in design that they may anticipate at the time that they do the platting. Now by the time they get to the final design of the utility system for the plat they may have to wind up making changes to the easements. They may have too many or they may not have enough.

MARNELL Then you have a final plat and then it is approved.

SCHLEGEL Then they should have more easements then necessary on that plat.

WARNER I think I would like to have this go back to staff and let them bring it to us next week with proper definition of what we are trying to do.

SCHLEGEL Maybe we should send this back to Subdivision Committee and let us work it out there.

MOTION: To return item back to Subdivision Committee have them work on some of the problems that this wording creates on the side lot easements and recommend a revision.

MARNELL moved, **MCKAY** seconded the motion, and it carried (10-0).

19. Other matters/adjournment.

SCHLEGEL I really don't have a lot of discretion on this coming item. It will be coming to MAPC on the next meeting, and it is the Urban Fringe Area Development Standards of the County Subdivision Policy and they are in a bit of a rush to get that done. It will be scheduled for Wichita City Council Workshop at the end of September, and hopefully for a Board Of County Commissioners Workshop in September or early October, so I would rather not delay action on that item.

MCKAY On that Item, we worked for a longtime trying to get that worked out, and then someone has added a whole bunch of stuff on the wells section - wording and stuff. Can we pass all the standards with the exception of that and leave that to be worked on?

SCHLEGEL Yes.

MCKAY Let's make sure the Board Of County Commissioners understands that.

SCHLEGEL I am hoping that particular item will get worked out by the time I present this to the Wichita City Council.

MCKAY In the event that it doesn't, I don't think we should hold up the whole process because of that one item that may go on for infinity.

The Metropolitan Area Planning Department informally adjourned at 4:21 p.m.

State of Kansas)

Sedgwick County) ^{SS}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2004.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)